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CHAPTER 1

ENVIRONMENTAL POLICY

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Part 1

General Provisions

75-1-101. Short title. This chapter may be cited as the "Montana Environmental Policy Act".

History: En. Sec. 1, Ch. 238, L. 1971; R.C.M. 1947, 69-6501.

75-1-102. Purpose. The purpose of this chapter is to declare a state policy which will encourage productive and enjoyable harmony between man and his environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

History: En. Sec. 2, Ch. 238, L. 1971; R.C.M. 1947, 69-6502.

75-1-103. Policy. (1) The legislature, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the state of Montana, in cooperation with the federal government and local governments and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can coexist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Montanans.

(2) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy to improve and coordinate state plans, functions, programs, and resources to the end that the state may:

(a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) assure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(e) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(f) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person shall be entitled to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

History: En. Sec. 3, Ch. 238, L. 1971; R.C.M. 1947, 69-6503.

75-1-104. Specific statutory obligations unimpaired. Nothing in 75-1-103 or 75-1-201 shall in any way affect the specific statutory obligations of any agency of the state to:

(1) comply with criteria or standards of environmental quality;

(2) coordinate or consult with any other state or federal agency; or

(3) act or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

History: En. Sec. 6, Ch. 238, L. 1971; R.C.M. 1947, 69-6506.

75-1-105. Policies and goals supplementary. The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

History: En. Sec. 7, Ch. 238, L. 1971; R.C.M. 1947, 69-6507.

Part 2

Environmental Impact Statements

75-1-201. General directions — environmental impact statements. The legislature authorizes and directs that, to the fullest extent possible:

(1) the policies, regulations, and laws of the state shall be interpreted and administered in accordance with the policies set forth in this chapter;

(2) all agencies of the state, except as provided in subsection (4), shall:

(a) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(b) identify and develop methods and procedures which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(c) include in every recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(d) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(e) recognize the national and long-range character of environmental problems and, where consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(f) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(g) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(h) assist the environmental quality council established by 5-16-101; and

(3) prior to making any detailed statement as provided in subsection (2)(c), the responsible state official shall consult with and obtain the comments of any state agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate state, federal, and local agencies which are authorized to develop and enforce environmental standards shall be made available to the governor, the environmental quality council, and the public and shall accompany the proposal through the existing agency review processes.

(4) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of this chapter.

History: **En. Sec. 4, Ch. 238, L. 1971; R.C.M. 1947, 69-6504; amd. Sec. 1, Ch. 391, L. 1979.**

Compiler's Comments

Effective date. Sec. 2, Ch. 391, L. 1979, provided: "This act is effective on passage and approval." Approved March 30, 1979.

75-1-202. Agency rules to prescribe fees. Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees which shall be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by 75-1-201. An agency must determine within 30 days after a completed application is filed whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this part. The fee assessed under this part shall be used only to gather data and information necessary to compile an environmental impact statement as defined in this chapter. No fee may be assessed if an agency intends only to file a negative declaration stating that the proposed project will not have a significant impact on the human environment.

History: **En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(1).**

75-1-203. Fee schedule — maximums. (1) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate as specified in 75-1-202, an agency may adopt a fee schedule which may be adjusted depending upon the size and complexity of the proposed project. No fee may be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of $2,500 to compile an environmental impact statement.

(2) The maximum fee that may be imposed by an agency shall not exceed 2% of any estimated cost up to $1 million, plus 1% of any estimated cost over $1 million and up to $20 million, plus ½ of 1% of any estimated cost over $20 million and up to $100 million, plus ¼ of 1% of any estimated cost over $100 million and up to $300 million, plus ⅛ of 1% of any estimated cost in excess of $300 million.

(3) If an application consists of two or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities. The estimated cost shall be determined by the agency and the applicant at the time the application is filed.

(4) Each agency shall review and revise its rules imposing fees as authorized by this part at least every 2 years. Furthermore, each agency shall provide the legislature with a complete report on the fees collected prior to the time that a request for an appropriation is made to the legislature.

History: **En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(2), (7).**

75-1-204. Application of administrative procedure act. In adopting rules prescribing fees as authorized by this part, an agency shall comply with the provisions of the Montana Administrative Procedure Act.

History: **En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(4).**

75-1-205. Use of fees. All fees collected under this part shall be deposited in the state earmarked revenue fund as provided in 17-2-102. All fees paid pursuant to this part shall be used as herein provided. Upon completion of the necessary work, each agency will make an accounting to the applicant of the funds expended and refund all unexpended funds without interest.

History: **En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(5).**

75-1-206. Multiple applications or combined facility. In cases where a combined facility proposed by an applicant requires action by more than one agency or multiple applications for the same facility, the governor shall designate a lead agency to collect one fee pursuant to this part, to coordinate the preparation of information required for all environmental impact statements which may be required, and to allocate and disburse the necessary funds to the other agencies which require funds for the completion of the necessary work.

History: **En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(6).**

75-1-207. Major facility siting applications excepted. No fee as prescribed by this part may be assessed against any person, corporation, partnership, firm, association, or other private entity filing an application for a certificate under the provisions of the Montana Major Facility Siting Act, chapter 20 of this title.

History: **En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(3).**

Part 3

Environmental Quality Council

75-1-301. Definition of council. In this part "council" means the environmental quality council provided for in 5-16-101.

History: En. by Code Commissioner, 1979.

75-1-302. Meetings. The council may determine the time and place of its meetings but shall meet at least once each quarter. Each member of the council is entitled to receive compensation and expenses as provided in 5-2-302. Members who are full-time salaried officers or employees of this state may not be compensated for their service as members but shall be reimbursed for their expenses.

History: En. Sec. 10, Ch. 238, L. 1971; amd. Sec. 6, Ch. 103, L. 1977; R.C.M. 1947, 69-6510.

75-1-303 through 75-1-310 reserved.

75-1-311. Examination of records of government agencies. The council shall have the authority to investigate, examine, and inspect all records, books, and files of any department, agency, commission, board, or institution of the state of Montana.

History: En. Sec. 15, Ch. 238, L. 1971; R.C.M. 1947, 69-6515.

75-1-312. Hearings — council subpoena power — contempt proceedings. In the discharge of its duties the council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council or any committee thereof or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the council, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

History: En. Sec. 16, Ch. 238, L. 1971; R.C.M. 1947, 69-6516.

75-1-313. Consultation with other groups — utilization of services. In exercising its powers, functions, and duties under this chapter, the council shall:

(1) consult with such representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments, and other groups as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations and individuals in order that duplication of effort and expense may be avoided, thus assuring that the council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

History: En. Sec. 17, Ch. 238, L. 1971; R.C.M. 1947, 69-6517.

75-1-314 through 75-1-320 reserved.

75-1-321. Appointment and qualifications of executive director. The council shall appoint the executive director and set his salary. The executive director shall hold a degree from an accredited college or university with a major in one of the several environmental sciences and shall have at least 3 years of responsible experience in the field of environmental management. He shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in 75-1-103; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment.

History: En. Sec. 11, Ch. 238, L. 1971; R.C.M. 1947, 69-6511.

75-1-322. Term and removal of executive director. The executive director is solely responsible to the council. He shall hold office for a term of 2 years beginning with July 1 of each odd-numbered year. The council may remove him for misfeasance, malfeasance, or nonfeasance in office at any time after notice and hearing.

History: En. Sec. 13, Ch. 238, L. 1971; R.C.M. 1947, 69-6513.

75-1-323. Appointment of employees. The executive director, subject to the approval of the council, may appoint whatever employees are necessary to carry out the provisions of this chapter, within the limitations of legislative appropriations.

History: En. Sec. 12, Ch. 238, L. 1971; R.C.M. 1947, 69-6512.

75-1-324. Duties of executive director and staff. It shall be the duty and function of the executive director and his staff to:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to such conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy and make recommendations to the governor and the legislature with respect thereto;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields where legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan;

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among such activities and with a general ecologic perspective, and suggest legislation to remedy such situations;

(10) annually, beginning July 1, 1972, transmit to the governor and the legislature and make available to the general public an environmental quality report concerning the state of the environment, which shall contain:

(a) the status and condition of the major natural, manmade, or altered environmental classes of the state, including but not limited to the air, the aquatic (including surface water and groundwater) and the terrestrial environments, including but not limited to the forest, dryland, wetland, range, urban, suburban, and rural environments;

(b) the adequacy of available natural resources for fulfilling human and economic requirements of the state in the light of expected population pressures;

(c) current and foreseeable trends in the quality, management, and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the state in the light of expected population pressures;

(d) a review of the programs and activities (including regulatory activities) of the state and local governments and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development, and utilization of natural resources; and

(e) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

History: **En. Sec. 14, Ch. 238, L. 1971; R.C.M. 1947, 69-6514.**

CHAPTER 2

AIR QUALITY

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Part 1

General Provisions and Administration

75-2-101. Short title. This chapter shall be known and may be cited as the "Clean Air Act of Montana".

History: En. Sec. 1, Ch. 313, L. 1967; R.C.M. 1947, 69-3904.

75-2-102. Policy and purpose. (1) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state.

(2) It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

(3) To these ends it is the purpose of this chapter to:

(a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;

(b) provide for an appropriate distribution of responsibilities among the state and local units of government;

(c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and

(d) provide a framework within which all values may be balanced in the public interest.

History: **En. Sec. 2, Ch. 313, L. 1967; R.C.M. 1947, 69-3905.**

75-2-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which are or tend to be injurious to human health or welfare, animal or plant life, or property or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(4) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Emission" means a release into the outdoor atmosphere of air contaminants.

(7) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity and includes persons resident in Canada.

History: **En. Sec. 3, Ch. 313, L. 1967; amd. Sec. 13, Ch. 349, L. 1974; amd. Sec. 1, Ch. 308, L. 1977; R.C.M. 1947, 69-3906.**

75-2-104. Limitations — personal cause of action unabridged. Nothing in this chapter shall be construed to:

(1) grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;

(2) affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;

(3) supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety;

(4) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account

of injury to persons or property and to maintain an action or other appropriate proceeding.

History: **(1) thru (3)En. Sec. 19, Ch. 313, L. 1967; Sec. 69-3922, R.C.M. 1947; (4)En. Sec. 18, Ch. 313, L. 1967; amd. Sec. 24, Ch. 349, L. 1974; Sec. 69-3921, R.C.M. 1947; R.C.M. 1947, 69-3921(4), 69-3922.**

75-2-105. Confidentiality of records. (1) Records or other information concerning air contaminant sources which are furnished to or obtained by the board or department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air contaminant source which would, if disclosed, reveal methods or processes entitled to protection as trade secrets shall be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if he wishes such information to enjoy confidential status. The department shall be served in any such action and may intervene as a party therein. Any trade secrets not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. However, emission data shall never be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if the analyses or summaries do not identify an owner or operator or reveal information otherwise made confidential by this section.

History: **En. Sec. 15, Ch. 313, L. 1967; amd. Sec. 22, Ch. 349, L. 1974; amd. Sec. 1, Ch. 248, L. 1975; R.C.M. 1947, 69-3918.**

75-2-106 through 75-2-110 reserved.

75-2-111. Powers of board. The board shall:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits under this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419.

History: **En. Sec. 6, Ch. 313, L. 1967; amd. Sec. 17, Ch. 349, L. 1974; R.C.M. 1947, 69-3909(1) thru (4); amd. Sec. 1, Ch. 560, L. 1979.**

Compiler's Comments

Statement of intent. The statement of intent attached to HB 716 (Ch. 560, L. 1979) provided: "The Legislature intends to grant to the Board of Health and Environmental Sciences rulemaking authority to adopt a permit fee schedule, and to adopt a schedule of penalty assessments for noncompliance with respect to any source under sections 7 through 15 of this act."

75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the board;

(b) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(e) encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed 30% of the total cost.

(f) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(g) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the state;

(h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to this;

(i) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(j) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of this device or system or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.

(l) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

(3) The department may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deteroratio

of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis.

History: (1)En. Sec. 4, Ch. 313, L. 1967; amd. Sec. 14, Ch. 349, L. 1974; Sec. 69-3907, R.C.M. 1947; (2)En. 69-3909.1 by Sec. 18, Ch. 349, L. 1974; Sec. 69-3909.1, R.C.M. 1947; R.C.M. 1947, 69-3907, 69-3909.1; amd. Sec. 2, Ch. 560, L. 1979.

75-2-113 through 75-2-120 reserved.

75-2-121. Advisory council. The advisory council shall act in an advisory capacity to the department on matters relating to air pollution.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(4).

75-2-122. Chairman — secretary. (1) A chairman shall be elected by the advisory council from among its number.

(2) The secretary of the advisory council shall be a member of the staff of the department, designated by the director. The secretary shall keep all records of meetings of and actions taken by the council. He shall keep the advisory council advised as to actions taken by persons in response to recommendations and orders issued under this chapter and shall perform other duties as determined by the advisory council, not inconsistent with rules and policies adopted under this chapter or specific authority otherwise given the advisory council.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(1), (3).

75-2-123. Meetings. The advisory council shall hold at least two regular meetings each calendar year and shall keep a summary record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him on receipt of a written request signed by two or more members of the advisory council. Notice of the time and place for meetings shall be given in advance to each member of the advisory council by the secretary.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(2).

Part 2

Standards, Permits, and Variances

75-2-201. Classifying and reporting air contaminant sources. (1) The board may classify air contaminant sources which in its judgment may cause or contribute to air pollution according to levels and types of emissions and other characteristics which relate to air pollution and may require reporting for any such class or classes. Such classifications shall be made with special reference to effects on health, economic and social factors, and physical effects on property and may be applied to the state as a whole or to any designated area.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the board may require reporting shall make reports containing such information as may be required concerning location, size and height of contaminant outlets, processes

employed, fuels used, and the nature and time periods or duration of emissions and any other matter relevant to air pollution which is available or reasonably capable of being assembled.

History: En. Sec. 7, Ch. 313, L. 1967; R.C.M. 1947, 69-3910.

75-2-202. Board to set ambient air quality standards. The board shall establish ambient air quality standards for the state.

History: En. Sec. 6, Ch. 313, L. 1967; amd. Sec. 17, Ch. 349, L. 1974; R.C.M. 1947, 69-3909(5).

75-2-203. Board to set emission levels. (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control air pollution. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlling, and no emission in excess thereof shall be lawful.

(2) In any area where the concentration of air pollution sources or of population or where the nature of the economy or of land and its uses so require, the board may fix more stringent requirements governing the emission of air pollutants than those in effect pursuant to subsection (1) of this section.

(3) The board may by rule use any widely recognized measuring system for measuring emission of air contaminants.

(4) Should federal minimum standards of air pollution be set by federal law, the board may, if necessary in some localities of this state, set more stringent standards by rule.

History: En. Sec. 10, Ch. 313, L. 1967; R.C.M. 1947, 69-3913.

75-2-204. Rules relating to construction, installation, alteration, or use. The board may by rule prohibit the construction, installation, alteration, or use of a machine, equipment, device, or facility which it finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants, unless a permit therefor has been obtained.

History: En. Sec. 8, Ch. 313, L. 1967; amd. Sec. 1, Ch. 185, L. 1975; amd. Sec. 4, Ch. 140, L. 1977; R.C.M. 1947, 69-3911(1).

75-2-205. Public hearings on rules. No rule and no amendment or repeal thereof may take effect except after public hearing on due notice and after the advisory council has been given, at the time of publication, the proposed text to comment thereon. Such notice shall be given and any hearing conducted in accordance with the provisions of the Montana Administrative Procedure Act and rules made pursuant thereto.

History: En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; R.C.M. 1947, 69-3917(1); amd. Sec. 3, Ch. 560, L. 1979.

75-2-206 through 75-2-210 reserved.

75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this section.

(2) Not later than 180 days before construction begins of any machine, equipment, device, or facility which the board finds may directly or indirectly

cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants and not later than 120 days before installation, alteration, or use begins, the owner or operator shall file with the department the appropriate permit application on forms available from the department and pay to the department a fee sufficient to cover:

(a) the reasonable costs of reviewing and acting upon the application for such permit; and

(b) the reasonable costs of implementing and enforcing the terms and conditions of such permit if the permit is granted (not including any court costs or other costs associated with any enforcement action). The fee shall be deposited in an earmarked revenue fund to be used by the department for administration of this section.

(3) Nothing in this section shall restrict the board's authority to adopt regulations providing for a single air quality permit system.

(4) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(5) The department shall require that applications for permits be accompanied by any plans, specifications, and other information it considers necessary.

(6) An application is not considered filed until the applicant has submitted all information and completed all application forms required by subsections (2), (3), and (4). However, if the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(7) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant in writing within 180 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application. However, where an application does not require the compilation of an environmental impact statement, the department shall notify the applicant in writing within 60 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application. Notification of approval or denial may be served personally or by registered or certified mail on the applicant or his agent.

(8) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act.

(9) The department's decision on the application is not final unless 15 days have elapsed and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

History: En. Sec. 8, Ch. 313, L. 1967; amd. Sec. 1, Ch. 185, L. 1975; amd. Sec. 4, Ch. 140, L. 1977; R.C.M. 1947, 69-3911(part); amd. Sec. 4, Ch. 560, L. 1979.

75-2-212. Variances — renewals — filing fees. (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the public.

(2) No exemption or partial exemption may be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) No exemption or partial exemption may be granted pursuant to this section for a period to exceed 1 year, but the exemption or partial exemption may be renewed for like periods if no complaint is made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. An application shall be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal the applicant shall give public notice of his application in accordance with rules of the board. A renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) An exemption, partial exemption, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the board. However, a person adversely affected by an exemption, partial exemption, or renewal granted by the board may obtain judicial review thereof as provided by 75-2-411.

(5) Nothing in this section and no exemption, partial exemption, or renewal granted pursuant to this section may be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to a person or his property.

(6) A person who owns or is in control of a plant, building, structure, process, or equipment (hereinafter called a facility) who applies to the board for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than $500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed $80,000. The department shall prepare a statement of actual costs, and funds in excess of this shall be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if no public hearing, environmental impact statement, or appreciable investigation by the

department is necessary, the minimum filing fee shall apply or the fee may be waived by the department. The filing fee shall be deposited in the earmarked revenue fund provided for in 17-2-102. It is the intent of the legislature that the revenues derived from the filing fees shall be used by the department to:

(a) compile the information required for rendering a decision on the request;

(b) compile the information necessary for any environmental impact statements;

(c) offset the costs of a public hearing, printing, or mailing; and

(d) carry out its other responsibilities under this chapter.

History: En. Sec. 13, Ch. 313, L. 1967; amd. Sec. 1, Ch. 186, L. 1975; amd. Sec. 8, Ch. 140, L. 1977; R.C.M. 1947, 69-3916.

Part 3

Local Air Pollution Control

75-2-301. Local air pollution control programs. (1) A municipality or county may establish a local air pollution control program on being petitioned by 15% of the qualified electors in its jurisdiction and, if the program is consistent with this chapter and is approved by the board after a public hearing conducted under 75-2-111, may thereafter administer in its jurisdiction the air pollution control program which:

(a) provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by 75-2-203, 75-2-212, and 75-2-402 and rules issued under these sections;

(b) provides for the enforcement of these requirements by appropriate administrative and judicial process; and

(c) provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program.

(2) If the board finds that the location, character, or extent of particular concentrations of population, air contaminant sources, or geographic, topographic, or meteorological considerations or any combination of these are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(3) If the board has reason to believe that an air pollution control program in force under this section is inadequate to prevent and control air pollution in the jurisdiction to which the program relates or that the program is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

(4) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(5) If the jurisdiction fails to take these measures within the time required, the department shall administer within such jurisdiction all of the

provisions of this chapter. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the program shall be a charge on the municipality or county.

(6) If the board finds that the control of a particular air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that air contaminant source. No charge may be assessed against the jurisdiction therefor. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(7) A jurisdiction in which the department administers its air pollution control program under subsection (5) of this section may, with the approval of the board, establish or resume an air pollution control program which meets the requirements of subsection (1) of this section.

(8) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

History: En. Sec. 16, Ch. 313, L. 1967; amd. Sec. 23, Ch. 349, L. 1974; R.C.M. 1947, 69-3919; amd. Sec. 5, Ch. 560, L. 1979.

75-2-302. State and federal aid. (1) Any local air pollution control program meeting the requirements of this chapter and rules made pursuant thereto shall be eligible for state aid in an amount equal to 30% of the locally funded annual operating cost thereof.

(2) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this chapter and any other applicable requirements of law.

History: En. Sec. 17, Ch. 313, L. 1967; R.C.M. 1947, 69-3920.

Part 4

Enforcement, Appeal, and Penalties

75-2-401. Enforcement. (1) When the department believes that a violation of this chapter or a rule made under it has occurred, it may cause written notice to be served personally or by registered or certified mail on the alleged violator or his agent. The notice shall specify the provision of this chapter or rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that violations have occurred, it shall either affirm or modify an order

previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. An order issued as part of a notice or after a hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order.

(3) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

(4) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties.

History: En. Sec. 11, Ch. 313, L. 1967; amd. Sec. 20, Ch. 349, L. 1974; amd. Sec. 6, Ch. 140, L. 1977; R.C.M. 1947, 69-3914; amd. Sec. 6, Ch. 560, L. 1979.

75-2-402. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time within 24 hours for a hearing to be held before the board. Within 24 hours after the commencement of the hearing and without adjournment, the board shall affirm, modify, or set aside the order of the department.

(2) In the absence of a generalized condition such as that referred to in subsection (1), if the department finds that emissions from the operation of one or more air contaminant sources are causing imminent danger to human health or safety, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard for 75-2-401. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders as provided in subsection (1) apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of this declaration, whether the power is conferred by statute or constitutional provisions or inheres in the office.

(4) Nothing in 75-2-205 may be construed to require a hearing before the issuance of an emergency order pursuant to this section.

History: (1) thru (3)En. Sec. 12, Ch. 313, L. 1967; amd. Sec. 21, Ch. 349, L. 1974; amd. Sec. 7, Ch. 140, L. 1977; Sec. 69-3915, R.C.M. 1947; (4)En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; Sec. 69-3917, R.C.M. 1947; R.C.M. 1947, 69-3915, 69-3917(2).

75-2-403. Inspections. (1) The department, for the purpose of ascertaining the state of compliance with this chapter and rules in force under it, may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which an air contaminant source is located or is being constructed or installed.

(2) A person may not refuse entry or access to an authorized representative of the department who presents appropriate credentials when the department requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report stating all facts found which relate to compliance status.

History: En. Sec. 9, Ch. 313, L. 1967; amd. Sec. 19, Ch. 349, L. 1974; amd. Sec. 5, Ch. 140, L. 1977; R.C.M. 1947, 69-3912.

75-2-404 through 75-2-410 reserved.

75-2-411. Judicial review. (1) A person aggrieved by an order of the board or local control authority may apply for rehearing upon one or more of the following grounds and upon no other grounds:

(a) the board or local control authority acted without or in excess of its powers;

(b) the order was procured by fraud;

(c) the order is contrary to the evidence;

(d) the applicant has discovered new evidence, material to him, which he could not with reasonable diligence have discovered and produced at the hearing; or

(e) competent evidence was excluded to the prejudice of the applicant.

(2) The petition must be in such form and filed in such time as the board shall prescribe.

(3) (a) Within 30 days after the application for rehearing is denied or, if the application is granted, within 30 days after the decision on the rehearing, a party aggrieved thereby may appeal to the district court of the judicial district of the state which is the situs of property affected by the order.

(b) The appeal shall be taken by serving a written notice of appeal upon the chairman of the board, which service shall be made by the delivery of a copy of the notice to the chairman and by filing the original with the clerk of the court to which the appeal is taken. Immediately after service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause and shall cause a notice of the same to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence, and whether or not the board made errors of law prejudicial to the appellant.

(4) Either the board or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court shall be limited to a review of the record of the hearing before the board and of the district court's review of that record.

History: En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; R.C.M. 1947, 69-3917(3) thru (5).

75-2-412. Criminal penalties — injunction preserved. (1) A person who violates this chapter or a rule or order made under it, other than 75-2-105, is guilty of an offense and subject to a fine not to exceed $1,000. Each day of violation constitutes a separate offense.

(2) A person who willfully violates 75-2-105 is guilty of an offense and subject to a fine not to exceed $1,000.

(3) Fines collected shall be deposited to the state general fund.

(4) Action under this section is not a bar to enforcement of this chapter or of rules or orders made under it by injunction or other appropriate remedy. The department may institute and maintain in the name of the state any enforcement proceedings.

History: En. Sec. 18, Ch. 313, L. 1967; amd. Sec. 24, Ch. 349, L. 1974; R.C.M. 1947, 69-3921(1) thru (3), (5).

75-2-413. Civil penalties — out-of-state litigants — effect of action. (1) Any person who violates any provision of this chapter or any rule enforced thereunder or any order made pursuant thereto and after notice thereof has been given by the department shall be subject to a civil penalty not to exceed $10,000. Each day of violation shall constitute a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412.

(2) (a) Action under subsection (1) of this section is not a bar to enforcement of this chapter or of rules or orders made under it by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or the rules or orders made under it may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) Moneys collected hereunder shall be deposited in the state general fund.

History: En. 69-3921.1 by Sec. 1, Ch. 98, L. 1975; amd. Sec. 2, Ch. 308, L. 1977; R.C.M. 1947, 69-3921.1; amd. Sec. 16, Ch. 560, L. 1979.

75-2-414 through 75-2-420 reserved.

75-2-421. Persons subject to noncompliance penalties — exemptions. (1) Except as provided in subsection (2), the department shall assess and collect a noncompliance penalty from any person who owns or operates:

(a) a stationary source (other than a primary nonferrous smelter which has received a nonferrous smelter order under 42 U.S.C. 7419) which is not in compliance with any emission limitation specified in an order of the board, emission standard, or compliance schedule under the state implementation plan approved by the federal environmental protection agency;

(b) a stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under 42 U.S.C. 7411 or 42 U.S.C. 7412; or

(c) any source referred to in subsections (1)(a) or (1)(b) which has been granted an exemption, extension, or suspension under subsection (2) or which is covered by a compliance order, or a primary nonferrous smelter which has received a primary nonferrous smelter order under 42 U.S.C. 7419, if such source is not in compliance with any interim emission control requirement or schedule of compliance under such extension, order, or suspension.

(2) Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of 75-2-421 through 75-2-429 with respect to a particular instance of noncompliance which:

(a) the department finds is de minimus in nature and in duration;

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

(c) is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.

(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 7, Ch. 560, L. 1979.

Compiler's Comments

Codification. Sec. 17, Ch. 560, L. 1979, provided: "It is intended that sections 7 through 15 be codified as an integral part of Title 75, chapter 2, part 4, and the provisions of Title 75, chapter 2, apply to sections 7 through 15."

Saving clause. Sec. 18, Ch 560, L. 1979, provided: "This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act." Effective July 1, 1979.

Severability. Sec. 19, Ch 560, L. 1979, provided: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

75-2-422. Amount of noncompliance penalty — late charge. (1) The amount of the penalty which shall be assessed and collected with respect to any source under 75-2-421 through 75-2-429 shall be equal to:

(a) the amount determined in accordance with the rules adopted by the board, which shall be no less than the economic value which a delay in compliance after July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under subsection (1)(a).

(2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not subtracted for such quarter from the costs under subsection (1)(a), such expenditure may be subtracted for any subsequent quarter from such costs. In no event may the amount paid be less than the

quarterly payment minus the amount attributed to actual cost of construction.

(3) If the owner or operator of any stationary source to whom notice is issued under 75-2-425 does not submit a timely petition under 75-2-425(2)(b) or submits a petition which is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(4) Any person who fails to pay the amount of any penalty with respect to any source under 75-2-421 through 75-2-429 on a timely basis shall be required to pay in addition a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be equal to 20% of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

History: En. Sec. 8, Ch. 560, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to HB 716 (Ch. 560, L. 1979) provided: "The Legislature intends to grant to the Board of Health and Environmental Sciences rulemaking authority to adopt a permit fee schedule, and to adopt a schedule of penalty assessments for noncompliance with respect to any source under sections 7 through 15 of this act."

75-2-423. Manner of making payment. (1) The assessed penalty required under 75-2-421 through 75-2-429 shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments, determined without regard to any adjustment or any subtraction under 75-2-422(1)(b), after the first payment shall be equal.

(2) The first payment shall be due on the date 6 months after the date of issuance of the notice of noncompliance under 75-2-425 with respect to any source. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for such source.

(3) For the purpose of this section, the term "period of covered noncompliance" means the period which begins on the date of issuance of the notice of noncompliance under 75-2-425 and ends on the date on which such source comes into or, for the purpose of establishing the schedule of payments, is estimated to come into compliance with such requirement.

History: En. Sec. 9, Ch. 560, L. 1979.

75-2-424. Adjustment of fee. (1) The department shall adjust from time to time the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under 75-2-425(2)(a) if the department finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of 75-2-421 through 75-2-429.

(2) Upon making a determination that a source with respect to which a penalty has been paid under 75-2-421 through 75-2-429 is in compliance and

is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment within 180 days after such source comes into compliance and:

(a) provide reimbursement with interest to be paid by the state at appropriate prevailing rates for overpayment by such person; or

(b) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

History: En. Sec. 10, Ch. 560, L. 1979.

75-2-425. Notice of noncompliance — challenge. (1) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to 75-2-421(1) which is not in compliance as provided in that subsection, within 30 days after the department has discovered the noncompliance.

(2) Each person to whom notice has been given pursuant to subsection (1) shall:

(a) calculate the amount of penalty owed (determined in accordance with 75-2-422(1)) and the schedule of payments (determined in accordance with 75-2-423) for each source and, within 45 days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department; or

(b) submit to the board a petition within 45 days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under 75-2-421(2) with respect to a particular source.

(3) Each person to whom notice of noncompliance is given shall pay the department the amount determined under 75-2-422 as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to subsection (2)(b).

History: En. Sec. 11, Ch. 560, L. 1979.

75-2-426. Hearing on challenge. (1) The board shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than 90 days after the receipt of any petition under 75-2-425(2)(b) with respect to such source.

(2) If the petition is denied, the petitioner shall submit the material required by 75-2-425(2)(a) to the department within 45 days of the date of decision.

History: En. Sec. 12, Ch. 560, L. 1979.

75-2-427. Deposit of noncompliance penalty fees. All noncompliance penalties collected by the department pursuant to 75-2-421 through 75-2-429 shall be deposited in an earmarked revenue fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining shall be transferred to the state general fund.

History: **En. Sec. 13, Ch. 560, L. 1979.**

75-2-428. Effect of new standards on noncompliance penalty. In the case of any emission limitation, emission standard, or other requirement approved or adopted by the board under this chapter after July 1, 1979, and approved by the federal environmental protection agency as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under 75-2-421 through 75-2-429 shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner.

History: **En. Sec. 14, Ch. 560, L. 1979.**

75-2-429. Effect of noncompliance penalty on other remedies. (1) Any orders, payments, sanctions, or other requirements under 75-2-421 through 75-2-428 shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this chapter and shall in no way affect any civil or criminal enforcement proceedings brought under 75-2-412 or 75-2-413.

(2) The noncompliance penalties collected pursuant to 75-2-421 through 75-2-428 are intended to be cumulative and in addition to any other remedies, procedures, and requirements authorized by this chapter.

History: **En. Sec. 15, Ch. 560, L. 1979.**

CHAPTER 3

NUCLEAR REGULATION

Part 1 — General Provisions

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75-3-102. Purpose.
75-3-103. Definitions.
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Part 1

General Provisions

75-3-101. Policy. It is the policy of the state of Montana, in furtherance of its responsibility to protect the public health and safety, to:

(1) institute and maintain a regulatory program for sources of ionizing radiation so as to provide, for compatibility with the standards and regulatory programs of the federal government, a single effective system of regulation within the state and a system consistent insofar as possible with those of other states; and

(2) institute and maintain a program to permit development and utilization of sources of ionizing radiation for peaceful purposes consistent with the health and safety of the public.

History: En. Sec. 1, Ch. 108, L. 1967; R.C.M. 1947, 69-5801.

75-3-102. Purpose. It is the purpose of this chapter to provide a program:

(1) of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) to establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product, source, and special nuclear materials; and

(4) to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public.

History: En. Sec. 2, Ch. 108, L. 1967; R.C.M. 1947, 69-5802.

75-3-103. Definitions. The definitions used in this chapter are intended to be consistent with those used in 10 CFR 1-199 and 49 CFR 173.389-173.399. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Byproduct material" means a radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) "Department" means the department of health and environmental sciences.

(3) "Disposal" means burial in soil, release through the sanitary sewerage system, incineration, or permanent long-term storage with no intention of or provision for subsequent removal.

(4) "General license" means a license effective pursuant to rules promulgated by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing quantities of byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General licenses are effective without the filing of applications with the department or the issuing of licensing documents to the user.

(5) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but not sound or radio waves or visible, infrared, or ultraviolet light.

(6) "Large quantity radioactive material" is that quantity of radioactive material defined in 49 CFR 173.389(b).

(7) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States nuclear regulatory commission, any successor thereto, or federal agencies licensed by the nuclear regulatory commission.

(8) "Registration" means the registering with the department by the legal owner, user, or authorized representative of sources of ionizing radiation in the manner prescribed by rule.

(9) "Source material" means uranium, thorium, or any other material which the department or the United States nuclear regulatory commission declares by order to be source material or ores containing one or more of the foregoing materials in such concentration as the department or the nuclear regulatory commission declares by order to be source material after the nuclear regulatory commission has determined the material in such concentration to be source material.

(10) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the department or the United States nuclear regulatory commission or any successor thereto declares by order to be special nuclear material or any material artificially enriched by any of the foregoing but does not include source material.

(11) "Specific license" means a license issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing quantities of byproduct, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

History: En. Sec. 3, Ch. 108, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 16, Ch. 140, L. 1977; R.C.M. 1947, 69-5803; amd. Sec. 1, Ch. 68, L. 1979.

75-3-104. Exemptions — sources, diagnosis, and therapy. (1) This chapter does not apply to the following sources or conditions:

(a) electrical equipment that is not intended primarily to produce radiation and that, by nature of design, does not produce radiation at the point of nearest approach at a weekly rate higher than one-tenth the appropriate limit for any critical organ exposed. The production testing or production servicing of such equipment is not exempt.

(b) radiation machines during process of manufacture or in storage or transit;

(c) any radioactive material while being transported in conformity with regulations adopted by the nuclear regulatory commission or any successor thereto or the interstate commerce commission and specifically applicable to the transportation of such radioactive materials.

(2) No exemptions under this section are granted for those quantities or types of activities that do not comply with the established rules promulgated by the nuclear regulatory commission or by any successor thereto.

(3) The provisions of this chapter may not be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

History: (1), (2)En. Sec. 15, Ch. 108, L. 1967; Sec. 69-5815, R.C.M. 1947; (3)En. Sec. 8, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-5808, R.C.M. 1947; R.C.M. 1947, 69-5808(4), 69-5815; amd. Sec. 2, Ch. 68, L. 1979.

75-3-105. Conflicting laws. Ordinances, resolutions, or regulations now or hereafter in effect of the governing body of a municipality or county relating to byproduct, source, and special nuclear materials shall not be superseded by this chapter, provided that such ordinances or regulations are and shall continue to be consistent with the provisions of this chapter, amendments thereto, and rules thereunder.

History: En. Sec. 11, Ch. 108, L. 1967; R.C.M. 1947, 69-5811.

75-3-106. Confidentiality — trade secrets. A report of investigation or inspection or processes obtained under this chapter shall not be disclosed or opened to public inspection except as may be necessary for the performance of the functions of the department.

History: En. Sec. 6, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1975; amd. Sec. 17, Ch. 140, L. 1977; R.C.M. 1947, 69-5806(8).

75-3-107. Inspections. The department or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property within the jurisdiction of the department, other than a private dwelling, for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules promulgated thereunder, and the owner, occupant, or person in charge of such property shall permit such entry and inspection. Entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

History: En. Sec. 7, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5807.

75-3-108. Inspection agreements and training programs. (1) The department, on behalf of the state, may enter into an agreement or agreements with the federal government, other states, or interstate agencies whereby this state shall perform, on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(2) The department and any other appropriate state agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter.

History: **En. Sec. 10, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5810.**

Part 2

Control of Radioactive Substances

75-3-201. State radiation control agency. (1) The department is the state radiation control agency.

(2) Under the laws of this state, the department may employ, compensate, and prescribe the powers and duties of the individuals which are necessary to carry out this chapter.

(3) The department may for the protection of the occupational and public health and safety:

(a) develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation;

(b) develop programs and adopt rules with due regard for compatibility with federal programs for licensing and regulation of byproduct, source, radioactive waste, and special nuclear materials and other radioactive materials. These rules shall cover equipment and facilities, methods for transporting, handling, and storage of radioactive materials, permissible levels of exposure, technical qualifications of personnel, required notification of accidents and other incidents involving radioactive materials, survey methods and results, methods of disposal of radioactive materials, posting and labeling of areas and sources, and methods and effectiveness of controlling individuals in posted and restricted areas.

(c) adopt rules relating to control of other sources of ionizing radiation. These rules shall cover equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys, and records.

(d) advise, consult, and cooperate with other agencies of the state, the federal government, other states, interstate agencies, political subdivisions, and groups concerned with control of sources of ionizing radiation;

(e) accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(f) encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation;

(g) collect and disseminate information relating to control of sources of ionizing radiation, including:

(i) maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under this chapter and any administrative or judicial action pertaining thereto;

(iii) maintenance of a file of all rules relating to regulation of sources of ionizing radiation, pending or adopted, and proceedings thereon.

History: En. Sec. 4, Ch. 108, L. 1967; amd. Sec. 83, Ch. 349, L. 1974; R.C.M. 1947, 69-5804.

75-3-202. Licensing and registration. (1) The department shall provide by rule for general or specific licensing of persons to receive, possess, or transfer radioactive materials and devices or equipment utilizing such materials. The rules shall provide for amendment, suspension, or revocation of licenses pursuant to 75-3-401 and 75-3-403.

(2) Each application for a specific license shall be in writing and shall state such information as the department by rule may determine to be necessary to decide the technical, insurance, and financial qualifications or any other qualification of the applicant as the department considers reasonable and necessary to protect the occupational and public health and safety. The department may, at any time after the filing of the application and before the expiration of the license, require further written statements and may make such inspections as the department considers necessary in order to determine whether the license should be granted, denied, modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The department may require an application or statement to be made under oath or affirmation.

(3) Each license shall be in such form and contain such terms and conditions as the department may by rule prescribe.

(4) No license issued pursuant to the provisions of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license may be assigned or in any manner disposed of.

(5) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules or orders issued in accordance with the provisions of this chapter.

(6) The department may require registration and inspection of persons dealing with sources of ionizing radiation which do not require a specific license and may require compliance with specific safety standards to be promulgated by the department.

(7) The department is authorized to exempt certain users from the licensing or registration requirements set forth in this section when the department makes a finding that the exemption of the users will not constitute a significant risk to the health and safety of the public.

(8) Rules promulgated pursuant to this chapter may provide for recognition of such other state or federal licenses as the department considers desirable, subject to such registration requirements as the department prescribes.

History: En. Sec. 6, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1975; amd. Sec. 17, Ch. 140, L. 1977; R.C.M. 1947, 69-5806(1) thru (7), (9).

75-3-203. Federal-state agreements. (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state.

(2) Any person who, on the effective date of an agreement under subsection (1) of this section, possesses a license issued by the federal government shall be deemed to possess the same pursuant to this chapter, which shall expire either 90 days after receipt from the department of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

History: En. Sec. 9, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5809.

75-3-204. Records. (1) The department shall require each person who acquires, possesses, or uses a source of ionizing radiation to maintain records relating to its receipt, storage, transfer, or disposal and such other records as the department may require, subject to such exemptions as may be provided by rules.

(2) The department shall require each person who acquires, possesses, or uses a source of ionizing radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules of the department. Copies of these records and those required to be kept by subsection (1) of this section shall be submitted to the department on request.

(3) The department shall adopt reasonable regulations, compatible with those of the United States nuclear regulatory commission or the national committee on radiation protection, pertaining to reports of exposure of personnel to radiation. The regulations shall require that reports of excessive exposure be made to the individual exposed and to the department and shall make provision for periodic and terminal reports to individuals for whom personnel monitoring is required.

History: En. Sec. 8, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5808(1) thru (3); amd. Sec. 3, Ch. 68, L. 1979.

Part 3

Disposal of Large Quantities of Radioactive Material

75-3-301. Definition. Notwithstanding the definition in 75-3-103, as used in this part "person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

History: En. 69-5817 by Sec. 1, Ch. 68, L. 1977; R.C.M. 1947, 69-5817; amd. Sec. 4, Ch. 68, L. 1979.

75-3-302. Disposal of large quantities of radioactive material prohibited — exceptions and exclusion. (1) No person may dispose of in Montana large quantity radioactive material produced in other states.

(2) Byproduct material possessed, used, and transported for educational purposes, scientific research and development, medical research, diagnosis, and treatment, geophysical surveying, and other purposes licensed by the United States nuclear regulatory commission shall be excepted from this part during the period of possession, use, and transportation prior to disposal.

(3) Nothing in this part precludes the construction of a nuclear facility approved under the requirements of the Montana Major Facility Siting Act.

History: En. 69-5818, 69-5819, 69-5821 by Secs. 2, 3, 5, Ch. 68, L. 1977; R.C.M. 1947, 69-5818, 69-5819, 69-5821.

75-3-303. Penalty. A person convicted of violating this part is guilty of a misdemeanor and shall be fined an amount not less than $250 for each offense. In this part, each day of violation constitutes a separate offense.

History: En. 69-5820 by Sec. 4, Ch. 68, L. 1977; R.C.M. 1947, 69-5820.

Part 4

Enforcement, Appeal, and Penalties

75-3-401. Administrative hearings. In a proceeding under this chapter for granting, suspending, revoking, or amending a license or for determining compliance with or granting exceptions from rules adopted under this chapter, the board of health and environmental sciences shall first afford an opportunity for a hearing on the record upon the request of a person whose interest may be affected by the proceeding and shall admit the person as a party to the proceeding.

History: En. Sec. 12, Ch. 108, L. 1967; amd. Sec. 84, Ch. 349, L. 1974; R.C.M. 1947, 69-5812(1).

75-3-402. Emergency impoundment of materials. The department shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or who fails to observe the provisions of this chapter or any rules promulgated hereunder.

History: En. Sec. 14, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5814.

75-3-403. Emergency orders and rules. When the department finds that an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue a rule or order reciting the existence of the emergency and requiring that such action be taken as considered necessary to meet the emergency. Notwithstanding any provision of this chapter to the contrary, the rule or order is effective immediately. A person to whom the rule or order is directed shall comply with it immediately but on application to the board shall be afforded a prompt hearing. On the basis of the hearing the emergency rule or order shall be continued, modified, or revoked by the board within 30 days after the hearing or when the emergency no longer exists.

History: En. Sec. 12, Ch. 108, L. 1967; amd. Sec. 84, Ch. 349, L. 1974; R.C.M. 1947, 69-5812(2).

75-3-404. Prohibited activity. (1) No person shall acquire, own, possess, or use any radioactive byproduct material, source material, special nuclear materials, or other radioactive materials, occurring naturally or produced artificially, without having been granted a license therefor from the department or transfer to another or dispose of said materials without first having been granted approval of the department therefor in accordance with the administrative rules of the department.

(2) It shall be unlawful for any person to use, manufacture, produce, or knowingly transport, transfer, receive, acquire, own, or possess any source of ionizing radiation unless such person is licensed by or registered with the department in accordance with the provisions of this chapter and rules issued hereunder.

History: (1)En. Sec. 16, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-5816, R.C.M. 1947; (2)En. Sec. 13, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-5813, R.C.M. 1947; R.C.M. 1947, 69-5813, 69-5816(part).

75-3-405. Penalty. A person who violates 75-3-404 is guilty of a misdemeanor punishable by a fine of not less than $100 and not more than $1,000 or by confinement in the county jail of not less than 30 days and not more than 90 days or by both.

History: En. Sec. 16, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5816(part); amd. Sec. 5, Ch. 68, L. 1979.

CHAPTER 4

RESERVED

CHAPTER 5

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Part 1

General Provisions

75-5-101. Policy. It is the public policy of this state to:

(1) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

(2) provide a comprehensive program for the prevention, abatement, and control of water pollution.

History: En. Sec. 121, Ch. 197, L. 1967; amd. Sec. 1, Ch. 21, L. 1971; amd. Sec. 1, Ch. 455, L. 1975; R.C.M. 1947, 69-4801(1).

75-5-102. Purpose — rights of action not abridged. (1) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters.

(2) This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality or person, as owner of water rights or otherwise, in the exercise of his rights in

equity or under the common law or statutory law to suppress nuisances or to abate pollution.

History: **En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(4).**

75-5-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with groundwater infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(5) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(6) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(7) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes.

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(9) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

(10) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(11) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(12) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(13) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(14) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(15) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(16) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a point source.

(17) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(18) "Effluent standard" means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into state waters.

History: En. Sec. 122, Ch. 197, L. 1967; amd. Sec. 2, Ch. 21, L. 1971; amd. Sec. 1, Ch. 506, L. 1973; amd. Sec. 59, Ch. 349, L. 1974; amd. Sec. 2, Ch. 455, L. 1975; amd. Sec. 3, Ch. 308, L. 1977; amd. Sec. 1, Ch. 444, L. 1977; R.C.M. 1947, 69-4802.

75-5-104. Special applicability. This chapter applies to drainage or seepage from all sources, including that from artificial, privately owned ponds or lagoons, if such drainage or seepage may reach other state waters in a condition which may pollute the other state waters.

History: En. Sec. 124, Ch. 197, L. 1967; amd. Sec. 3, Ch. 21, L. 1971; R.C.M. 1947, 69-4804.

75-5-105. Confidentiality of records. Any information concerning sources of pollution which is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution which would, if disclosed, reveal methods or processes entitled to protection as trade secrets shall be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if he wishes such information to enjoy confidential status. The department shall be served in any such action and may intervene as a party therein. Any information not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters shall not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution if such analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information which is otherwise made confidential by this section.

History: En. Sec. 16, Ch. 21, L. 1971; amd. Sec. 10, Ch. 455, L. 1975; R.C.M. 1947, 69-4822.

75-5-106. Interagency cooperation. The council, board, and department may require the use of records of all state agencies and may seek the assistance of such agencies. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, board, and department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

History: En. Sec. 21, Ch. 21, L. 1971; R.C.M. 1947, 69-4827.

Part 2

Administrative Agencies

75-5-201. Board rules authorized. The board shall adopt rules for the administration of this chapter.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(g).

75-5-202. Board hearings. The board shall hold hearings necessary for the proper administration of this chapter or, in the case of permit issuance hearings, delegate this function to the department.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(f).

75-5-203 through 75-5-210 reserved.

75-5-211. Department to administer chapter. (1) Except as otherwise provided, the department is responsible for administration of this chapter.

(2) The department may use its personnel and those of the local departments of health as necessary to administer this chapter.

History: En. Sec. 125, Ch. 197, L. 1967; amd. Sec. 4, Ch. 21, L. 1971; amd. Sec. 60, Ch. 349, L. 1974; R.C.M. 1947, 69-4805.

75-5-212. Department research and information. The department shall:

(1) collect and furnish information relating to the prevention and control of water pollution;

(2) conduct or encourage necessary research and demonstrations concerning water pollution.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(d), (1)(e).

75-5-213. Comprehensive plan for prevention and control of water pollution. The department shall advise, consult, and cooperate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(h).

75-5-214 through 75-5-220 reserved.

75-5-221. Water pollution control advisory council — general. (1) The council provided for in 2-15-2107 shall select a chairman from among its members. The director of health and environmental sciences shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) It shall hold at least two regular meetings each calendar year. Special meetings shall be held at the call of the chairman or on written request of two or more members.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform his duties.

(4) The council shall act only in an advisory capacity to the department on matters relating to water pollution.

History: En. Sec. 132, Ch. 197, L. 1967; amd. Sec. 10, Ch. 21, L. 1971; amd. Sec. 64, Ch. 349, L. 1974; R.C.M. 1947, 69-4812.

Part 3

Classification and Standards

75-5-301. Classification and standards for state waters. The board shall:

(1) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(2) formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention;

(3) review, from time to time at intervals of not more than 3 years, established classifications of waters and standards of water purity and classification.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(part).

75-5-302. Revised classifications not to lower water quality standards — exception. In revising classifications or standards or in adopting new classifications or standards, the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted except upon a finding that a particular state water has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at the time of classification and only if the action is taken pursuant to 75-5-307.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(c)(i).

75-5-303. Nondegradation policy. The board shall require:

(1) that any state waters whose existing quality is higher than the established water quality standards be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and

(2) any industrial, public, or private project or development which would constitute a new source of pollution or an increased source of pollution to high-quality waters, referred to in subsection (1), to provide the degree of waste treatment necessary to maintain that existing high water quality.

History: **En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(c)(ii), (1)(c)(iii).**

75-5-304. Adoption of standards — pretreatment, effluent, performance. The board shall adopt pretreatment standards for wastewater discharged into a municipal disposal system, adopt effluent standards as defined in 75-5-103, adopt toxic effluent standards and prohibitions, and establish standards of performance for new point source discharges.

History: **En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(h).**

75-5-305. Adoption of requirements for treatment of wastes. The board may establish minimum requirements for the treatment of wastes.

History: **En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(2)(b).**

75-5-306. Purer than natural unnecessary — dams. (1) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream as long as the minimum treatment requirements established under this chapter are met.

(2) "Natural" refers to conditions or material present from runoff or percolation over which man has no control or from developed land where all reasonable land, soil, and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams at July 1, 1971, are natural.

History: **En. Sec. 121, Ch. 197, L. 1967; amd. Sec. 1, Ch. 21, L. 1971; amd. Sec. 1, Ch. 455, L. 1975; R.C.M. 1947, 69-4801(2).**

75-5-307. Hearings required for classification, formulation of standards, and rulemaking. (1) Before streams are classified or standards established or modified or rules made, revoked, or modified, the board shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards, or modification of them and any rules proposed to be made, revoked, or modified shall be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in the area affected. Notice shall also be mailed directly to persons the board believes may be affected by the proposed action. The council shall be given not less than 30 days prior to first publication to comment on the proposed action.

(2) At a hearing held under this section, the board shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The board may make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under 75-5-611.

History: **En. Sec. 134, Ch. 197, L. 1967; amd. Sec. 12, Ch. 21, L. 1971; R.C.M. 1947, 69-4814.**

Part 4

Permits

75-5-401. Board rules for permits. (1) The board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits.

(2) The rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department insures that such permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(d), (1)(e).

75-5-402. Duties of department. The department shall:

(1) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes into state waters, consistently with rules made by the board;

(2) examine plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(3) clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(a) thru (1)(c).

75-5-403. Denial or modification of permit. (1) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder and he may request a hearing before the board, in the manner stated in 75-5-611, for the purpose of petitioning the board to reverse or modify the action of the department. Such hearing shall be held within 30 days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. If the holder does not request a hearing before the board, modification of a permit shall be effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before the board, no order modifying his permit shall be effective until 20 days after he has received notice of the action of the board.

(2) This section does not apply to any modification made in permit conditions at the time of reissuance, but only to those modifications made in existing permits during their terms.

History: En. Sec. 14, Ch. 21, L. 1971; amd. Sec. 4, Ch. 455, L. 1975; R.C.M. 1947, 69-4807.1(1).

75-5-404. Suspension or revocation of permit — procedure. If the department suspends or revokes a permit because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately if the department finds that the violation is likely to continue and will cause pollution, the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board shall grant the holder a hearing, to be conducted in the manner specified in 75-5-611, and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be effective immediately unless the board directs otherwise.

History: En. Sec. 14, Ch. 21, L. 1971; amd. Sec. 4, Ch. 455, L. 1975; R.C.M. 1947, 69-4807.1(2).

Part 5

Financial Provisions

75-5-501. Board to control state matching funds for construction of water pollution control facilities. (1) The board shall control funds appropriated by the state for the purpose of providing matching funds to local governments for the construction of water pollution control facilities.

(2) The board shall adopt rules and establish standards for the use of such matching funds by local governments in the planning and construction of local water pollution control facilities.

(3) Funds appropriated under this section shall be used only to provide an increase in the aid from the federal government not otherwise obtainable and may not exceed 25% of the total cost of the project as participated in by the federal water pollution control administration.

History: En. Sec. 1, Ch. 165, L. 1969; amd. Sec. 61, Ch. 349, L. 1974; R.C.M. 1947, 69-4808.1.

75-5-502. Board authorized to accept loans and grants. The board may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(2)(a).

75-5-503. Department authorized to accept loans and grants. The department may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(2).

75-5-504 through 75-5-510 reserved.

75-5-511. Sewage system operators authorized to adopt charges and rates for users. (1) A municipality or other entity operating a sewage system may adopt a system of charges and rates to assure that each recipient of treatment works services within the municipality's jurisdiction or service area will pay its proportionate share of the costs of operation, maintenance, and replacement of any treatment works facilities or services provided by the municipality or other entity.

(2) A municipality or other entity operating a sewage system may require industrial users of its treatment works to pay to the municipality or other entity that portion of the cost of construction of the treatment works which is allocable to the treatment of such industrial user's wastes. The department may determine whether the payment required of the industrial user for the portion of the cost of the construction of the treatment works is properly allocable to the treatment of the industrial user's wastes.

History: **En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(1), (2).**

75-5-512. Uses allowed for revenues. A municipality or other entity operating a sewage system may retain the amounts of the revenues derived from the payment of costs by industrial users of its treatment works services and expend such revenues, together with interest thereon, for:

(1) repayment to applicable agencies of government of any grants or loans made to the municipality or other entity operating a sewage system for construction of the treatment works;

(2) future expansion and reconstruction of the treatment works; and

(3) other municipal purposes.

History: **En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(3).**

75-5-513. Sewage system operators to keep records — department's power to inspect and audit. A municipality or other entity operating sewage systems shall keep records, financial statements, and books regarding its rates and charges and amounts collected on account of its treatment works and how such revenues are allocated. The department may inspect such records, financial statements, and books, audit them or cause them to be audited at such intervals as deemed necessary.

History: **En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(4).**

75-5-514. When board to establish rates and collect charges. (1) In the event a municipality or other entity operating sewage systems fails, neglects, or refuses when required by the department to adopt the system of charges and rates authorized by 75-5-511, the board may adopt a system of charges and rates as provided for in 75-5-511(1) and collect, administer, and apply such revenues for the purposes of 75-5-512.

(2) In lieu of proceeding in the manner set forth in subsection (1) of this section, the department may institute proceedings at law or in equity to enforce compliance with or restrain violations of 75-5-511 through 75-5-513.

History: **En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(5), (6).**

75-5-515. Determination of costs payable by users. In determining the amount of treatment works costs to be paid by recipients of treatment works services, the municipality or other entity operating sewage systems or, if applicable, the board shall consider the strength, volume, types, and delivery flow rate characteristics of the waste; the nature, location, and type of treatment works; the receiving waters; and such other factors as deemed necessary.

History: **En. 69-4808.5 by Sec. 15, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.5.**

Part 6

Enforcement, Appeal, and Penalties

75-5-601. Clean-up orders. The department shall issue orders to any person to clean up any material which he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and which may pollute them.

History: **En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(f).**

75-5-602. Power to require monitoring. In order to carry out the objectives of this chapter and to effectively monitor the discharge of sewage, industrial wastes, and other wastes into state waters, the department may require the owner or operator of any point source, or the owner or operator of any facility that discharges into a municipal sewage system and to which pretreatment standards promulgated under this chapter apply, to:

(1) establish and maintain records;

(2) make reports;

(3) install, use, and maintain monitoring equipment or methods, including biological monitoring techniques;

(4) sample effluents using specified monitoring methods at designated locations and intervals;

(5) provide other information as may be reasonably required by the department.

History: **En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975; R.C.M. 1947, 69-4809.2(1).**

75-5-603. Power to inspect. The authorized representative of the department, upon presentation of his credentials, may at reasonable times enter upon any public or private property to:

(1) investigate conditions relating to pollution of state waters or violations of permit conditions;

(2) have access to and copy any records required under this chapter;

(3) inspect any monitoring equipment or method required under 75-5-602(3); and

(4) sample any effluents which the owner or operator of such source is required to sample under 75-5-602(4).

History: **En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975; R.C.M. 1947, 69-4809.2(2).**

75-5-604. Information obtained to relate to standards. Any records, reports, or information obtained under 75-5-602 and 75-5-603 shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards.

History: **En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975; R.C.M. 1947, 69-4809.2(3).**

75-5-605. Prohibited activity. (1) It is unlawful to:

(a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained therein;

(c) violate any order issued pursuant to this chapter; or

(d) violate any provision of this chapter.

(2) It is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system which discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters.

History: En. Sec. 126, Ch. 197, L. 1967; amd. Sec. 5, Ch. 21, L. 1971; amd. Sec. 3, Ch. 455, L. 1975; amd. Sec. 2, Ch. 444, L. 1977; R.C.M. 1947, 69-4806.

75-5-606 through 75-5-610 reserved.

75-5-611. Violation of chapter — notice and hearing. (1) When the department has reason to believe that a violation of this chapter or a rule made under it has occurred, it may have written notice served personally or by mail on the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of corrective action which the department requires, and the time within which the action is to be taken. For the purposes of this chapter, service by mail is complete on the date of mailing.

(2) In a notice given under subsection (1) of this section, the department may require the alleged violator to appear before the board for a public hearing and to answer the charges made against him. The hearing shall be held no sooner than 15 days after service of the notice, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(3) If the department does not require an alleged violator to appear before the board for a public hearing, he may request the board to conduct the hearing. The request shall be in writing and shall be filed with the department no later than 30 days after service of a notice under subsection (1) of this section. If a request is filed, a hearing shall be held within a reasonable time.

(4) If a hearing is held under this section, it shall be public and shall, if the board considers it practicable, be held in a county in which the violation is alleged to have occurred.

(5) After a hearing or on failure of an alleged violator to make a timely request for a hearing, the board may issue an appropriate order for the prevention, abatement, or control of pollution. It shall state the date or dates by which a violation shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution.

(6) The alleged violator may petition the board for a rehearing on the basis of new evidence, which petition the board may grant for good cause shown.

(7) In addition to or instead of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

History: En. Sec. 13, Ch. 21, L. 1971; amd. Sec. 65, Ch. 349, L. 1974; amd. Sec. 8, Ch. 455, L. 1975; R.C.M. 1947, 69-4820.

75-5-612. Additional sanctions authorized. In addition to all other remedies created by this chapter, the department is authorized to take appropriate enforcement action on its own initiative to prevent, abate, and control:

(1) the pollution of state waters;

(2) any violation of a condition or limitation imposed by a permit issued under 75-5-402(1); or

(3) any violation of rules relating to pretreatment standards.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; R.C.M. 1947, 69-4820.1(1).

75-5-613. Compliance orders. In furtherance of 75-5-612, a person violating a condition, limitation, standard, or other requirement established pursuant to this chapter may be served with a compliance order issued by the department. The order must specify the condition, limitation, standard, or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good-faith efforts that have been made to comply with the condition, limitation, standard, or other requirement that has been violated. The compliance order issued under this section shall be served either personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; R.C.M. 1947, 69-4820.1(2).

75-5-614. Injunctions authorized. (1) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation which would be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in the district court of the county in which the defendant is located or resides or is doing business or any county where a violation occurs or is threatened if the defendant cannot be located in Montana, and the court shall have jurisdiction to restrain the violation and to require compliance.

(2) The department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that the

allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction.

History: (1)En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; Sec. 69-4820.1, R.C.M. 1947; (2)En. Sec. 19, Ch. 21, L. 1971; amd. Sec. 68, Ch. 349, L. 1974; amd. Sec. 12, Ch. 455, L. 1975; Sec. 69-4825, R.C.M. 1947; R.C.M. 1947, 69-4820.1(3), 69-4825.

75-5-615. Violators subject to penalties. (1) A person found to be in violation of a condition, limitation, standard, or other requirement established pursuant to 75-5-612 through 75-5-614 is subject to the penalty provisions of 75-5-631, 75-5-632, 75-5-633, and 75-5-635.

(2) For the purpose of this section, the term "person" means, in addition to the definition contained in 75-5-103, any responsible corporate officer.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; R.C.M. 1947, 69-4820.1(4), (5); amd. Sec. 6, Ch. 68, L. 1979.

75-5-616. Enforcement of permits and chapter. The department shall take such actions as are authorized or required under 75-5-612 through 75-5-615 to insure that the terms and conditions of issued permits are complied with and to insure that violations of this chapter are appropriately prosecuted.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(g).

75-5-617 through 75-5-620 reserved.

75-5-621. Emergencies. (1) Notwithstanding any other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under it which, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department shall order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order shall be effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise.

(2) Notice of the order shall conform to the requirements of 75-5-611(1) so far as practicable. The notice shall indicate that the order is an emergency order.

(3) Upon issuing such an order, the department shall fix a place and time for a hearing before the board, not later than 5 days thereafter unless the person to whom the order is directed shall request a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing shall be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board shall be accompanied by the statement specified in 75-5-611(5). An action for review of the order of the board may be initiated in the manner specified in 75-5-641. The initiation of such an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section.

History: En. Sec. 18, Ch. 21, L. 1971; amd. Sec. 11, Ch. 140, L. 1977; R.C.M. 1947, 69-4824.

75-5-622. Additional emergency powers. Notwithstanding any other provisions of this chapter, the department, upon receipt of evidence that a pollution source or combination of sources is endangering the health, welfare, or livelihood of a person, may bring suit in the district court of any county in which the defendant is located or resides or is doing business to enjoin the discharge of pollutants causing or contributing to the alleged pollution.

History: **En. 69-4824.1 by Sec. 7, Ch. 506, L. 1973; R.C.M. 1947, 69-4824.1.**

75-5-623 through 75-5-630 reserved.

75-5-631. Civil penalties — injunctions not barred. (1) A person who violates this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter shall be subject to a civil penalty not to exceed $10,000. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain any enforcement proceedings in the name of the state.

History: **En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(1), (3).**

75-5-632. Criminal penalties. A person who willfully or negligently violates 75-5-605 or any pretreatment standard established pursuant to this chapter is guilty of an offense and subject to a fine not to exceed $25,000 per day of violation or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, subsequent convictions shall subject a person to a fine of not more than $50,000 per day of violation or imprisonment for not more than 2 years, or both.

History: **En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(2).**

75-5-633. Penalties for false statements and falsifying monitoring. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall upon conviction be punished by a fine of not more than $10,000 or by imprisonment for not more than 6 months, or both.

History: **En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(6).**

75-5-634. Fines to go to general fund. Fines collected shall be deposited to the state general fund.

History: **En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(5).**

75-5-635. Costs and expenses — recovery by department. In a civil action initiated by the department under this chapter, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey which led to the establishment of the violation and any expense incurred by the state in removing, correcting, or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants.

History: **En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(7).**

75-5-636. Action by other parties. A person, association, corporation, or agency of the state or federal government may apply to the department protesting a violation of this chapter. The department shall make an investigation and make a written report to the person, association, corporation, or agency which made the protest. If a violation is established by the investigation of the department, appropriate enforcement action shall be taken.

History: **En. Sec. 20, Ch. 21, L. 1971; amd. Sec. 69, Ch. 349, L. 1974; amd. Sec. 13, Ch. 455, L. 1975; R.C.M. 1947, 69-4826.**

75-5-637 through 75-5-640 reserved.

75-5-641. Appeals from board orders — review by district court. (1) An appeal of an order of the board shall be in the district court of the county in which the alleged source of pollution is located.

(2) A person interested in the order may intervene, in the manner provided by the rules of civil procedure, if he shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the board if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) The initiation of an action for review or the taking of an appeal does not stay the effectiveness of any order of the board unless the court finds that there is probable cause to believe:

(a) that refusal to grant a stay will cause serious harm to the affected party; and

(b) that any violation found by the board will not continue or, if it does continue, any harmful effects on state waters will be remedied immediately on the cessation of the violation.

(5) If a court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board.

History: **En. Sec. 15, Ch. 21, L. 1971; amd. Sec. 66, Ch. 349, L. 1974; R.C.M. 1947, 69-4821.**

CHAPTER 6

PUBLIC WATER SUPPLIES, DISTRIBUTION, AND TREATMENT

Part 1 — Public Water Supply

Section
75-6-101. Policy.
75-6-102. Definitions.
75-6-103. Duties of the board.

75-6-104. Duties of department.
75-6-105. Records required for wells drilled to supply water to public.
75-6-106. Licensing of laboratories.
75-6-107. Variances and exemptions.
Sections 75-6-108 through 75-6-110 reserved.
75-6-111. Appeal from rule or standard — injunction to require compliance.
75-6-112. Prohibited acts.
75-6-113. Penalty.

Part 1

Public Water Supply

75-6-101. Policy. It is the public policy of this state to protect, maintain, and improve the quality and potability of water for public water supplies and domestic uses.

History: **En. Sec. 140, Ch. 197, L. 1967; R.C.M. 1947, 69-4901.**

75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Drainage" means rainfall, surface, and subsoil water.

(5) "Industrial waste" means any waste substance from the processes of business or industry or from the development of any natural resource, together with any sewage that may be present.

(6) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water supply system.

(7) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(8) "Person" means any individual, corporation, association, partnership, municipality, other political subdivision of the state, or federal agency.

(9) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other

wildlife. A discharge which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(10) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

(11) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations at Title 40, CFR, Parts 141 and 142.

(12) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with groundwater infiltration and surface water present.

(13) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground.

History: En. Sec. 141, Ch. 197, L. 1967; amd. Sec. 1, Ch. 67, L. 1974; amd. Sec. 1, Ch. 556, L. 1977; R.C.M. 1947, 69-4902; amd. Sec. 1, Ch. 556, L. 1979.

75-6-103. Duties of the board. (1) The board has general supervision over all state waters which are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees for services rendered by the department in analyzing water and conducting inspections;

(c) monitoring, recordkeeping, and reporting by persons who own or operate a public water supply system;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the issuance of licenses by the department to laboratories that conduct analysis of public water supply systems;

(f) the siting, construction, operation, and modification of a public water supply system;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part; and

(i) any other requirement necessary for the protection of public health as described in this part.

(3) The board may issue orders necessary to fully implement the provisions of this part.

History: En. Sec. 142, Ch. 197, L. 1967; amd. Sec. 70, Ch. 349, L. 1974; amd. Sec. 2, Ch. 556, L. 1977; R.C.M. 1947, 69-4903; amd. Sec. 2, Ch. 556, L. 1979.

75-6-104. Duties of department. The department shall:

(1) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their quality and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of assuring its quality;

(4) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) collect fees for services rendered in analyzing water and conducting inspections to cover costs of the service and deposit the fees collected in an earmarked revenue fund for use by the department;

(7) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the board are being obeyed;

(9) enforce and administer the provisions of this part;

(10) establish a plan for the provision of safe drinking water under emergency circumstances;

(11) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys; and

(12) enter into agreements with local boards of health wherever appropriate for the performance of surveys and inspections under the provisions of this part.

History: En. Sec. 143, Ch. 197, L. 1967; amd. Sec. 71, Ch. 349, L. 1974; amd. Sec. 3, Ch. 556, L. 1977; R.C.M. 1947, 69-4904; amd. Sec. 3, Ch. 556, L. 1979.

75-6-105. Records required for wells drilled to supply water to public. Every person drilling a water well to furnish water for public consumption shall keep a complete record of the depth, thickness, and character of different strata and other information prescribed by the board. Data shall be furnished to the department on forms prescribed by it. These data are available to the public at all reasonable times.

History: En. Sec. 145, Ch. 197, L. 1967; R.C.M. 1947, 69-4906.

75-6-106. Licensing of laboratories. (1) No laboratory analysis of water taken from a public water supply system or any report of such an analysis required by this part or a rule adopted under this part may be accepted by the department or board unless the analysis or report is made by the laboratory of the department or by a laboratory licensed by the department for such purposes. The department shall issue a license to any laboratory that can meet criteria for licensing established in the rules adopted by the board.

(2) An application for a license under this section shall be made on forms furnished by the department.

(3) A person aggrieved by a decision of the department to grant, deny, or revoke a license may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act.

History: En. 69-4905.2 by Sec. 5, Ch. 556, L. 1977; R.C.M. 1947, 69-4905.2; amd. Sec. 4, Ch. 556, L. 1979.

75-6-107. Variances and exemptions. The department may grant a variance or exemption from the requirements of this part or the rules adopted under this part pursuant to the terms and conditions of the variance and exemption rules adopted by the board. A variance or exemption granted pursuant to this section shall be accompanied by a compliance plan specifying a time schedule for compliance. A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance or exemption may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act.

History: En. 69-4905.1 by Sec. 4, Ch. 556, L. 1977; R.C.M. 1947, 69-4905.1; amd. Sec. 5, Ch. 556, L. 1979.

75-6-108 through 75-6-110 reserved.

75-6-111. Appeal from rule or standard — injunction to require compliance. (1) A person aggrieved by a rule, standard, or order adopted or issued pursuant to this part may appeal to the district court. While the appeal is pending, the rule, standard, or order is in force.

(2) The department may seek an injunction from the appropriate district court to require compliance with this part or a rule or order issued as authorized by this part. The department may also initiate an action to collect a criminal penalty as provided in 75-6-113.

History: En. Sec. 146, Ch. 197, L. 1967; amd. Sec. 72, Ch. 349, L. 1974; amd. Sec. 6, Ch. 556, L. 1977; R.C.M. 1947, 69-4907(1), (2); amd. Sec. 7, Ch. 68, L. 1979.

75-6-112. Prohibited acts. A person shall not:

(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, drainage, industrial waste, or other waste into any state waters or on the banks of any state waters or into any abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;

(3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of any kind on any watershed of a public water supply system unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and

(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) construct, alter, or extend any system of water supply, water distribution, sewer, drainage, wastewater, or sewage disposal without first submitting necessary maps, plans, and specifications to the department for its review and approval;

(5) operate or maintain any public water supply system which exceeds a maximum contaminant level established by the board unless he has been

granted or has an application pending for a variance or exemption pursuant to this part.

History: **En. Sec. 144, Ch. 197, L. 1967; R.C.M. 1947, 69-4905; amd. Sec. 6, Ch. 556, L. 1979.**

Compiler's Comments

Saving clause. Sec. 7, Ch. 556, L. 1979, provided: "This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act." Effective July 1, 1979.

Severability. Sec. 8, Ch. 556, L. 1979, was a severability clause.

75-6-113. Penalty. Any person violating this part or any rule or order of the board or department issued under the provisions of this part shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $500. Each day upon which a violation of this part occurs shall be considered a separate offense.

History: **En. Sec. 146, Ch. 197, L. 1967; amd. Sec. 72, Ch. 349, L. 1974; amd. Sec. 6, Ch. 556, L. 1977; R.C.M. 1947, 69-4907(3).**

CHAPTER 7

AQUATIC ECOSYSTEM PROTECTIONS

Part 1 — Streambeds

Section
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75-7-106. Junked motor vehicles as reinforcement prohibited — penalty.
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75-7-112. Procedure for considering projects — team.
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75-7-121. Judicial review.
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75-7-217. Funding.

Part 1

Streambeds

75-7-101. Short title. This part may be cited as "The Natural Streambed and Land Preservation Act of 1975".

History: **En. 26-1510 by Sec. 1, Ch. 463, L. 1975; R.C.M. 1947, 26-1510.**

75-7-102. Policy. It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and in so doing to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by The Constitution of the State of Montana.

History: **En. 26-1511 by Sec. 2, Ch. 463, L. 1975; R.C.M. 1947, 26-1511.**

75-7-103. Definitions. As used in this part, the following definitions apply:

(1) "Applicant" means any person presenting notice of a project to the supervisors.

(2) "Department" means the Montana department of fish, wildlife, and parks.

(3) "District" means a conservation district under Title 76, chapter 15, in which the project will take place; a grass conservation district under Title 76, chapter 16, where no conservation district exists, or the board of county commissioners where a district does not exist.

(4) "Person" means any natural person, corporation, firm, partnership, association, or other legal entity not covered under 87-5-502.

(5) "Project" means a physical alteration or modification of a stream in the state of Montana which results in a change in the state of the stream in contravention of 75-7-102.

(6) "Stream" means any natural perennial-flowing stream or river, its bed and immediate banks.

(7) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(8) "Team" means one representative of the supervisors, one representative of the department, and the applicant or his representative.

History: **En. 26-1512 by Sec. 3, Ch. 463, L. 1975; R.C.M. 1947, 26-1512; amd. Sec. 2, Ch. 218, L. 1979.**

75-7-104. Vested water rights preserved. This part shall not impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States.

History: En. 26-1516 by Sec. 7, Ch. 463, L. 1975; R.C.M. 1947, 26-1516.

75-7-105. Application of floodplain management. Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 76, chapter 5, parts 1 through 4, floodway management and regulation, where designated floodplains or designated floodways have been established in accordance with that chapter.

History: En. 26-1519 by Sec. 10, Ch. 463, L. 1975; R.C.M. 1947, 26-1519.

75-7-106. Junked motor vehicles as reinforcement prohibited — penalty. (1) It is unlawful to place junked motor vehicles or the body portion of junked motor vehicles between high-water channel banks of any stream or to reinforce banks of a stream with such junked motor vehicles or the body portion of such junked motor vehicles.

(2) A person who willfully violates subsection (1) is guilty of a misdemeanor and upon conviction shall be fined not to exceed $250, imprisoned in the county jail for a term not to exceed 30 days, or both.

(3) A person who violates subsection (1) shall be subject to a civil penalty of not more than $50. Each day upon which a violation occurs is a separate violation.

History: (1)En. 69-6811 by Sec. 1, Ch. 112, L. 1975; amd. Sec. 19, Ch. 140, L. 1977; Sec. 69-6811, R.C.M. 1947; (2), (3)En. 69-6812 by Sec. 2, Ch. 112, L. 1975; amd. Sec. 8, Ch. 252, L. 1977; Sec. 69-6812, R.C.M. 1947; R.C.M. 1947, 69-6811, 69-6812(part).

75-7-107 through 75-7-110 reserved.

75-7-111. Notice of project. (1) A person planning to engage in a project shall present written notice of the project to the supervisors before any portion of the project takes place.

(2) The notice shall include the location, general description, and preliminary plan of the project.

History: En. 26-1513 by Sec. 4, Ch. 463, L. 1975; R.C.M. 1947, 26-1513.

75-7-112. Procedure for considering projects — team. (1) The supervisors shall receive all notices of proposed projects within their district. They shall, within 5 days of receipt of a notice, examine and investigate the notice and determine whether the proposal is for a project. Within the 5 days, they shall send a copy of their determination to the department and the applicant. If the supervisors determine that the proposal is not a project, the applicant may, upon receipt of written notice, proceed with the proposed activity.

(2) If the supervisors determine that the proposal is for a project, the department shall, within 5 days of receipt of the determination, notify the supervisors whether the department requests an on-site inspection by a team.

(3) The supervisors shall call a team together within 20 days of receipt of the request of the department for an on-site inspection. A member of the team shall notify the supervisors in writing, within 5 days after notice of the call for an inspection, of his waiver of participation in the inspection. If the

department does not request an on-site inspection within the time specified above, the supervisors may deny or approve the project or may make recommendations for alternative plans.

(4) Each member of the team shall recommend in writing, within 50 days of the date of application, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(5) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members, within 60 days of the date of application, of their decision.

(6) When a member of the team disagrees with the supervisors' action, he may ask, within 5 days of receipt of the supervisors' decision, that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision thereon.

(7) Upon written notice, with a recommendation or alternative plan, by the supervisors to the applicant, the applicant, within 15 days, shall notify the supervisors in writing if he wishes to proceed with the project in accordance with the recommendations or alternative plans. No work may be commenced on a project before the end of this 15-day period unless written permission is given by all team members. If the written decision of the supervisors approves the proposed project without recommendation or alternative plan, the applicant may proceed with the project upon the expiration of 10 days after receipt of the decision.

(8) The supervisors may extend, upon the request of a team member, the time limits provided in subsections (4) and (5) where, in their determination, the time provided is not sufficient to carry out the purposes of this part. The time extension may not, in total, exceed 1 year from date of application. The applicant shall be notified, within 60 days of date of application, of the initial time extension and shall be notified immediately of any subsequent time extensions.

(9) No work on a project under this part may take place without the written consent of the supervisors.

History: En. 26-1514 by Sec. 5, Ch. 463, L. 1975; amd. Sec. 1, Ch. 140, L. 1977; R.C.M. 1947, 26-1514.

75-7-113. Emergencies — procedure. (1) The provisions of this part do not apply to those actions which are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for a project under this section shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency.

(2) The supervisors shall send one copy of the notice, within 5 days of its receipt, to the department.

(3) A team, called together as described in 75-7-112(3), shall make an on-site inspection and individual written reports to the supervisors within 30 days, giving its observations and opinions on the emergency project.

(4) If the same or a similar emergency occurs to the same applicant more than once within a 5-year period, the supervisors shall request the team members to include in their reports a determination of the validity of the emergency action and to ascertain the feasibility of a more permanent solution to the emergency.

(5) The supervisors shall determine the feasibility of a more permanent solution and shall, within 30 days, recommend that the person put the solution into effect within a reasonable period of time as determined by the supervisors. Failure of the person to put that solution into effect is not a violation of this part unless a subsequent emergency action results from this failure.

(6) When a member of the team or the applicant disagrees with the supervisors' recommendation, he may ask that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision thereon.

History: En. 26-1517 by Sec. 8, Ch. 463, L. 1975; amd. Sec. 2, Ch. 140, L. 1977; R.C.M. 1947, 26-1517.

75-7-114. Arbitration panel — selection. The arbitration panel shall consist of three members chosen by the senior judge of the judicial district in which the dispute takes place. The members shall be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it and will review the proposed project in line with the policy set forth in 75-7-102.

History: En. 26-1515 by Sec. 6, Ch. 463, L. 1975; R.C.M. 1947, 26-1515(1).

75-7-115. Arbitration panel — costs. Cost of the arbitration panel, computed as for jurors' fees under 3-15-201, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

History: En. 26-1515 by Sec. 6, Ch. 463, L. 1975; R.C.M. 1947, 26-1515(2).

75-7-116. Modification of plan — assignment of costs. (1) If the final decision of the arbitration panel requires modifications or alterations from the original project plan as approved by the supervisors, then the arbitration panel shall include in its decision any part or percent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant.

(2) Any of the involved entities may withdraw or modify required modification of the project within 10 days after the decision.

History: En. 26-1518 by Sec. 9, Ch. 463, L. 1975; R.C.M. 1947, 26-1518.

75-7-117 through 75-7-120 reserved.

75-7-121. Judicial review. Any final action under this part may be appealed within 30 days to the district court.

History: En. 26-1521 by Sec. 12, Ch. 463, L. 1975; R.C.M. 1947, 26-1521.

75-7-122. Public nuisance. Except for emergency action, a project engaged in by any person without prior approval as prescribed in this part is declared a public nuisance and subject to proceedings for immediate abatement.

History: En. 26-1522 by Sec. 13, Ch. 463, L. 1975; R.C.M. 1947, 26-1522.

75-7-123. Initiating project without consent — penalty — restoration. Any person initiating a project without written consent of the supervisors is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $500 for each day that person continues to physically alter or modify the stream, and in addition, that person shall restore, at the discretion of the court, the damaged stream, as recommended by the team and approved by the supervisors, to as near its prior condition as possible.

History: **En. 26-1523 by Sec. 14, Ch. 463, L. 1975; R.C.M. 1947, 26-1523(1).**

75-7-124. Violation of time provisions — penalty. Any person or entity who violates the time provisions of this part is guilty of a misdemeanor and upon conviction shall be punished by a fine of $5 per day.

History: **En. 26-1523 by Sec. 14, Ch. 463, L. 1975; R.C.M. 1947, 26-1523(2).**

Part 2

Lakeshores

75-7-201. Policy. The legislature finds and declares that the natural lakes of Montana are high in scenic and resource values and that the conservation and protection of these lakes is important to the continued value of lakeshore property as well as to the state's residents and visitors who use and enjoy the lakes. The legislature further declares that local governments should play the primary public roles in establishing policies to conserve and protect lakes. Local governments do not have adequate statutory powers to protect their lake areas, and it is the purpose of this part to confer such powers on local governments, provided that such powers are exercised to maintain public health, welfare, and safety.

History: **En. 89-3701 by Sec. 1, Ch. 527, L. 1975; R.C.M. 1947, 89-3701.**

75-7-202. Definitions. As used in this part, the following definitions apply:

(1) "Lake" means a body of standing water and the area within its lakeshore occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least 160 acres for at least 6 months in a year of average precipitation as such averages are determined by the United States geological survey, not used exclusively for agricultural purposes, and navigable by canoes and small boats.

(2) "Lakeshore" is the perimeter of a lake when the lake is at mean annual high-water elevation, including the land within 20 horizontal feet from that high-water elevation.

(3) "Local governing body" or "governing body" is that unit of local government authorized to administer the Montana Subdivision and Platting Act on the land adjoining a lake or part of a lake subject to this part.

(4) "Mean annual high-water elevation" is the mean average of the highest elevation of a lake in each of at least 5 consecutive years, excluding any high levels caused by erratic or unusual weather or hydrological conditions. A highest elevation caused by operation of a dam or other impoundment counts toward the establishment of the mean annual high-water elevation.

History: **En. 89-3702 by Sec. 2, Ch. 527, L. 1975; R.C.M. 1947, 89-3702(part).**

75-7-203. Change in definition of lake by local government. A local governing body may by resolution change the minimum size in the definition of a lake so that this part may apply to natural lakes in the county no smaller than 20 acres in water surface area.

History: En. 89-3702 by Sec. 2, Ch. 527, L. 1975; R.C.M. 1947, 89-3702(part).

75-7-204. Work for which permit required. (1) A person who proposes to do any work that will alter or diminish the course, current, or cross-sectional area of a lake or its lakeshore must first secure a permit for the work from the local governing body.

(2) Without limitation, the following activities, when conducted below mean annual high-water elevation, are examples of work for which a permit is required: construction of channels and ditches; dredging of lake bottom areas to remove muck, silt, or weeds; lagooning, meaning the placement of a narrow strip of land across a portion of a lake to create a lagoon; filling; constructing breakwaters of pilings; constructing wharves and docks.

History: En. 89-3703 by Sec. 3, Ch. 527, L. 1975; R.C.M. 1947, 89-3703; amd. Sec. 8, Ch. 68, L. 1979.

75-7-205. Unauthorized work. A person who performs work in a lake after May 1, 1975, without a permit for that work shall, if required by the local governing body or the district court, restore the lake to its condition before he disturbed it.

History: En. 89-3708 by Sec. 8, Ch. 527, L. 1975; R.C.M. 1947, 89-3708(1).

75-7-206. Nature of property rights under part. Work or development authorized or approved under this part shall not create a vested property right in the permitted development other than in the physical structure, if any, so developed.

History: En. 89-3708 by Sec. 8, Ch. 527, L. 1975; R.C.M. 1947, 89-3708(2).

75-7-207. Regulations for issuance of permits. (1) Before January 1, 1976, every governing body having jurisdiction over an area containing a lake shall adopt regulations in the form of criteria for the issuance or denial of permits for work in lakes.

(2) Where a planning board has been created under 76-1-104 for an area containing a lake, the governing body shall seek the recommendations of the planning board as to the regulations to be adopted under this part.

(3) The local governing body may provide a summary procedure to permit work which it finds has a minimal or insignificant impact on a lakeshore.

(4) A governing body whose area contains more than one lake may adopt regulations in differing form for the various lakes, recognizing the physical and social differences between lakes.

(5) The requirements of 75-7-208 are minimum requirements and do not restrict a local governing body from adopting such stricter or additional regulations as may be authorized by other statutes.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(1), (3) thru (5).

75-7-208. Factors favoring issuance of permit. The regulations shall favor issuance if the proposed work will not during either its construction or its utilization:

(1) materially diminish water quality;
(2) materially diminish habitat for fish or wildlife;
(3) interfere with navigation or other lawful recreation;
(4) create a public nuisance; or
(5) create a visual impact discordant with natural scenic values, as determined by the local governing body, where such values form the predominant landscape elements.

History: **En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(2).**

75-7-209. Regulations for particular lake. Upon petition of five owners or 30% of the owners of land abutting a lake, whichever is smaller, the department of natural resources and conservation may adopt regulations under 75-7-207 and 75-7-208 for the particular lake. The department may then exercise the powers conferred upon a local governing body by this part until the governing body adopts the necessary regulations.

History: **En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(6).**

75-7-210. Application for permit — fee. A person seeking a permit for work in a lake shall apply to the local governing body and shall pay an application fee of $10 to the governing body.

History: **En. 89-3705 by Sec. 5, Ch. 527, L. 1975; R.C.M. 1947, 89-3705(part).**

75-7-211. Consultation with local planning board. (1) Where a planning board has been created under 76-1-104 for the area containing the lake in question, the governing body shall seek the recommendation of the planning board as to the compliance of the proposed work with the criteria for the issuance of a permit. The planning board shall report its recommendations to the governing body as to whether the proposed work conforms to the criteria for issuance of a permit and may require the applicant to submit additional information before the board reports its recommendations.

(2) In areas where a planning board is not established, the functions of a planning board under this section shall be exercised by the local governing body.

History: **En. 89-3705 by Sec. 5, Ch. 527, L. 1975; R.C.M. 1947, 89-3705(part).**

75-7-212. Issuance of permit. (1) Unless the applicant agrees to an extension of time, the governing body shall grant or deny permission for the work within 90 days of receiving an application for a permit.

(2) If the governing body finds that the proposed work conforms to the criteria for issuing a permit, it shall issue a permit or conditional permit.

(3) If the governing body finds that the work does not conform to the criteria, it shall deny the application.

History: **En. 89-3706 by Sec. 6, Ch. 527, L. 1975; R.C.M. 1947, 89-3706.**

75-7-213. Variance procedure. A governing body which proposes to grant a variance from its regulations under this part shall first prepare an environmental impact statement, at the expense of the applicant, which conforms to the requirements of regulations adopted pursuant to this part, distribute this statement to interested residents, and conduct a public hearing on the proposed action.

History: **En. 89-3707 by Sec. 7, Ch. 527, L. 1975; R.C.M. 1947, 89-3707.**

75-7-214. Cooperation between governing bodies. If a lake, as defined by this part, is located under the jurisdiction of more than one governing body, the governing bodies are empowered and encouraged to enter into agreements to effectuate the purposes of this part and establish compatible criteria for denial or issuance of permits.

History: En. 89-3709 by Sec. 9, Ch. 527, L. 1975; R.C.M. 1947, 89-3709.

75-7-215. Judicial enforcement and review. The district court may hear and decide the following cases arising under this part within the district:

(1) a complaint and petition of a governing body or an interested person for an order to restore a lake to its previous condition or to enjoin further work in a lake;

(2) a petition of an interested person for review of a final action of a governing body upon an application for a permit;

(3) a petition of an interested person for review of an action of a governing body in adopting or amending regulations.

History: En. 89-3710 by Sec. 10, Ch. 527, L. 1975; R.C.M. 1947, 89-3710.

75-7-216. Penalty. (1) A person who violates an order issued under this part or who knowingly violates a regulation made under this part commits a misdemeanor and on conviction may be sentenced to 30 days in the county jail or fined $500, or both.

(2) Fines collected under this section shall be paid to the general fund of the county where the offense was committed for the purpose of administering this part.

History: En. 89-3711 by Sec. 11, Ch. 527, L. 1975; R.C.M. 1947, 89-3711.

75-7-217. Funding. In compliance with 1-2-112, the administration of this part is declared a public purpose of a city or county which may be paid out of permit application fees collected under 75-7-210 and federal revenue sharing moneys.

History: En. 89-3712 by Sec. 12, Ch. 527, L. 1975; R.C.M. 1947, 89-3712.

CHAPTERS 8 AND 9

RESERVED

CHAPTER 10

MANAGEMENT OF MATERIAL RECYCLING

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Part 1

Plans, Funds, and Administration

75-10-101. Purpose. The purpose of this part is to encourage the good management of solid waste and the conservation of natural resources through the promotion or development of systems to collect, separate, reclaim, recycle, and dispose of solid waste for energy production purposes where economically feasible and to provide a coordinated state solid waste and resource recovery plan.

History: En. 69-4012 by Sec. 2, Ch. 575, L. 1977; R.C.M. 1947, 69-4012(part).

75-10-102. Public policies. (1) To implement this part, the following are declared to be public policies of this state:

(a) Maximum recycling from solid waste is necessary to protect the public health, welfare, and quality of the natural environment.

(b) Solid waste management systems shall be developed, financed, planned, designed, constructed, and operated for the benefit of the people of this state.

(c) Private industry is to be utilized to the maximum extent possible in planning, designing, managing, constructing, operating, manufacturing, and marketing functions related to solid waste management systems.

(d) Local governments shall retain primary responsibility for adequate solid waste management with the state preserving those functions necessary to assure effective solid waste management systems throughout the state.

(e) Encouragement and support be given to individuals and municipalities to separate solid waste at its source in order to maximize the value of such wastes for reuse.

(f) The state shall provide technical advisory assistance to local governments and other affected persons in the planning, developing, financing, and implementation of solid waste management systems.

(g) Actions and activities performed or carried out by persons and their contractors in accordance with this part shall be in conformity with the state solid waste plan.

(2) This part is in addition and supplemental to any other law providing for the financing of a solid waste management system and does not amend or repeal any other law.

History: En. 69-4012, 69-4019 by Secs. 2, 9, Ch. 575, L. 1977; R.C.M. 1947, 69-4012(part), 69-4019.

75-10-103. Definitions. Unless the context clearly requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Front-end organizational funds" means the state money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets,

and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

(4) "Front-end planning funds" means the state money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

(5) "Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

(6) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other state, federal, or private entity, whether organized for profit or not.

(7) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(8) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, hazardous wastes, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; septic tank and cesspool pumpings; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; wood wastes and inert materials; but does not include municipal sewage, industrial wastewater effluents, or mining wastes as regulated under the mining and reclamation laws administered by the department of state lands.

(9) "Solid waste management system" means any system which controls the storage, treatment, recycling, recovery, or disposal of solid waste.

(10) "State solid waste plan" means the statewide plan formulated by the department as authorized by this part.

History: En. 69-4013 by Sec. 3, Ch. 575, L. 1977; R.C.M. 1947, 69-4013.

75-10-104. Duties of department. The department shall:

(1) prepare a state solid waste management and resource recovery plan for submission to the board;

(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules governing the submission of plans for a solid waste management system, rules governing procedures to be followed in applying for and making loans, and rules governing agreements between a local government and the department for grants or loans under this part;

(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system which is compatible with the state plan whenever such financial assistance is available;

(4) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating a solid waste management system in order to insure that the system conforms to the state plan;

(5) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for such loans are available;

(6) enforce and administer the provisions of this part;

(7) administer loans made by the state under the provisions of this part; and

(8) approve plans for a proposed solid waste management system submitted by a local government.

History: **En. 69-4014 by Sec. 4, Ch. 575, L. 1977; R.C.M. 1947, 69-4014(1).**

75-10-105. Powers of department. The department may:

(1) accept loans and grants from the federal government and other sources to carry out the provisions of this part; and

(2) make loans to a local government for the planning, design, and implementation of a solid waste management system.

History: **En. 69-4014 by Sec. 4, Ch. 575, L. 1977; R.C.M. 1947, 69-4014(2).**

75-10-106. Duties of board. The board shall:

(1) adopt a state solid waste management and resource recovery plan after complying with the procedures outlined in 75-10-111; and

(2) adopt rules necessary for the implementation of this part, including but not limited to rules governing the submission of plans for a solid waste management system, rules governing the procedures to be followed in applying for and making loans, and rules governing agreements between the local government and the department for grants and loans under this part.

History: **En. 69-4015 by Sec. 5, Ch. 575, L. 1977; R.C.M. 1947, 69-4015.**

75-10-107 through 75-10-110 reserved.

75-10-111. State solid waste management plan — hearings and action. (1) A proposed solid waste management plan shall be prepared by the department in conjunction with local governments in the state and any other interested person. After a draft of a proposed solid waste management plan has been prepared, the department shall circulate a copy of the proposed plan to the board of county commissioners in each county in the state, the governing body of every incorporated city or town in the state, any person responsible for the operation of a solid waste management system under the provisions of parts 1 and 2, chapter 10 of this title, the governor, the environmental quality council, and any other interested person for at least 90 days prior to submission of a final proposed solid waste management plan to the board. During the 90-day period for receipt of comments on the draft plan, the department shall hold at least three public hearings around the state on the draft plan.

(2) A final proposed plan shall be prepared based on the comments and objections received at the public hearings and from the persons who have submitted comments on the draft solid waste management plan. The final plan submitted to the board shall include a discussion of all comments and objections received and the reasons why recommendations for changes or amendments to the proposed plan were accepted or rejected. The board shall consider the final proposed solid waste management plan after giving notice and holding at least one public hearing pursuant to the rulemaking procedures outlined in the Montana Administrative Procedure Act.

History: **En. 69-4016 by Sec. 6, Ch. 575, L. 1977; R.C.M. 1947, 69-4016.**

75-10-112. Powers and duties of local government. A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state's solid waste plan and propose modifications to the state's solid waste plan;

(2) upon adoption of the state plan by the board, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) finance a solid waste management system through the assessment of a tax as authorized by state law;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system which the local government plans, designs, or constructs, for such consideration and upon such terms as are established by the local governments and consistent with the loan requirements as set forth in this part and rules;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the aforementioned powers;

(16) control the disposition of solid waste generated within the jurisdiction of a local government;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a refuse disposal district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part.

History: **En. 69-4017 by Sec. 7, Ch. 575, L. 1977; R.C.M. 1947, 69-4017.**

75-10-113. User's fee assessed. In the event the revenues of a solid waste management system are insufficient to pay the costs, a local government may levy a pro rata fee against the users of the solid waste management district. The pro rata fee shall be based on a per ton, per pound, or volume assessment.

History: **En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(6); amd. Sec. 9, Ch. 68, L. 1979.**

75-10-114 through 75-10-120 reserved.

75-10-121. Solid waste management loans — requisites. (1) The department may, in the name of the state of Montana, enter into agreements with a local government for loans, subject to any existing contractual obligations of the local government.

(2) A loan agreement must include but not be limited to the following:

(a) the amount of the loan, not to exceed the estimated reasonable amount of the total implementation cost, excluding equipment, construction, or land acquisition as determined by the department;

(b) an agreement by the department to pay part of the amount of the loan to the local government on a timetable as may be agreed upon by the parties;

(c) an agreement by the local government to proceed with the solid waste management system in accordance with plans approved by the department;

(d) an agreement by the local government to commence operation of the solid waste management system on its completion and not to discontinue operations or dispose of the solid waste management system without the approval of the department;

(e) an agreement by the local government to operate and maintain a solid waste management system in accordance with applicable provisions of part 2 of this chapter and rules of the department;

(f) an agreement by the local government to pledge any available sources of revenue to the repayment of loans according to the schedule established by the department. Any revenues from the sale of energy or recycled materials recovered from the solid waste management system and any money received under federal grants for local solid waste management may be used to make such payments. State loan funds for local solid waste management systems may be used only for front-end organizational activities.

(g) an agreement by the local government to establish and maintain adequate financial records for the solid waste management system, including an annual audit of the financial records and transactions covering each fiscal year by a certified public accountant. A copy of each audit must be submitted to the department of administration and the department within 30 days after its completion. Failure of a local government to file a copy of the audit as required by this section shall be grounds for rescinding the loan agreement.

(3) The department may enter into further agreements with a local government and acquire further guarantees or securities as are necessary to implement the provisions of this part.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(1), (3); amd. Sec. 10, Ch. 68, L. 1979.

75-10-122. Considerations in setting loan priorities. In allocating loan funds to local governments, the department shall establish priority based on a consideration of the plan that:

(1) most fully utilizes private enterprise for planning, design, management, construction, and operation of the facilities required to implement a solid waste management system;

(2) includes the largest population;

(3) is the most financially viable; and

(4) addresses the most pressing environmental and public health concerns.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(2).

75-10-123. Availability of state loans. Loan money as provided for under this part is available only if the local government is unable to secure adequate financing from other lending institutions or is unable to provide the adequate and necessary bonding for the implementation of a proposed solid waste management system.

History: En. 69-4020 by Sec. 10, Ch. 575, L. 1977; R.C.M. 1947, 69-4020.

75-10-124. Approval, payment, and compliance. (1) A loan agreement entered into pursuant to this part is subject to approval by the department and shall be accounted for on forms prepared by the department.

(2) The department shall establish a schedule of payments to be made by a local government under a loan agreement. Payment shall be made in an amount sufficient to pay the principal and interest cost of the loan obtained from the department.

(3) If a local government fails to comply with the payment schedule established by the department, the state may, after giving 30 days' written notice, withhold an equal share of any state taxes which are otherwise apportioned to the local government.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(4), (5), (7).

Part 2

Licensing of Refuse Disposal and Transportation

75-10-201. Short title. This part may be cited as "The Montana Solid Waste Management Act".

History: En. 69-4001.1 by Sec. 2, Ch. 542, L. 1977; R.C.M. 1947, 69-4001.1.

75-10-202. Legislative findings and policy. It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of hazardous wastes. It is declared the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible.

History: **En. Sec. 1, Ch. 35, L. 1965; amd. Sec. 1, Ch. 542, L. 1977; R.C.M. 1947, 69-4001.**

75-10-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or onto the land so that the solid waste or hazardous waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(4) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to those which are toxic, radioactive, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes.

(5) "Hazardous waste management" means the management of the storage, transport, treatment, recycling, recovery, or disposal of hazardous wastes.

(6) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(7) "Resource recovery" means the recovery of material or energy from solid waste.

(8) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(9) "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(10) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the

department of natural resources and conservation, or marketable wood byproducts.

(11) "Solid waste management system" means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste.

(12) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(13) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(14) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

History: En. Sec. 2, Ch. 35, L. 1965; amd. Sec. 26, Ch. 349, L. 1974; amd. Sec. 3, Ch. 542, L. 1977; R.C.M. 1947, 69-4002.

75-10-204. Powers and duties of department. The department shall adopt rules governing solid waste management systems which shall include but not be limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;

(5) procedures and requirements for the submission of reports on the operation and maintenance of a hazardous waste disposal site, the transport of hazardous waste, and the generation of hazardous wastes; and

(6) any other factors relating to the sanitary disposal or management of solid wastes.

History: En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(1).

75-10-205. Inspections. The department has continuing authority and responsibility to inspect a solid waste management system under the provisions of this part. Inspections may be conducted only during reasonable hours and only after presentation of appropriate credentials identifying the inspector as a duly authorized employee of the department.

History: En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(2).

75-10-206 through 75-10-210 reserved.

75-10-211. State hazardous waste disposal facility. The department may establish, maintain, and operate state hazardous waste management facilities to provide for the treatment, storage, or disposal of hazardous wastes accepted by the department as a result of spills, embargoes, citizen assistance requests, and other similar occurrences. A state facility shall meet all the requirements for a hazardous waste disposal site required by this part.

History: En. Sec. 5, Ch. 35, L. 1965; amd. Sec. 2, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 6, Ch. 542, L. 1977; R.C.M. 1947, 69-4005.

75-10-212. Disposal in unauthorized area prohibited — exception. (1) No person may dispose of solid waste or transport hazardous waste except as permitted under this part.

(2) It shall be unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) in or upon any highway, road, street, or alley of this state;

(b) in or upon any public recreational property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof or any officer or agent or department thereof;

(c) within 200 yards of such public highway, road, street, or alley or public recreational property;

(d) on privately owned property where hunting, fishing, or other recreation is permitted, provided this subsection shall not apply to the owner, his agents, or those disposing of debris or refuse with the owner's consent.

History: (1)En. Sec. 3, Ch. 35, L. 1965; amd. Sec. 4, Ch. 542, L. 1977; Sec. 69-4003, R.C.M. 1947; (2)En. Sec. 11-110, Ch. 197, L. 1965; amd. Sec. 1, Ch. 112, L. 1969; Sec. 32-4410, R.C.M. 1947; R.C.M. 1947, 32-4410(1), 69-4003.

75-10-213. Unlawful disposition of dead animals — exception. It is unlawful to:

(1) place all or any part of a dead animal in any lake, river, creek, pond, reservoir, road, street, alley, lot, or field;

(2) place all or any part of a dead animal within 1 mile of the residence of any person unless the dead animal or part of a dead animal is burned or buried at least 2 feet underground; or

(3) being the owner, permit all or any part of a dead animal to remain in the places specified in subsections (1) and (2) of this section except as provided in subsection (2) of this section.

History: En. Sec. 95, Ch. 197, L. 1967; R.C.M. 1947, 69-4518; amd. Sec. 11, Ch. 68, L. 1979.

75-10-214. Exclusions — exceptions to exclusions. (1) (a) This part may not be construed to prohibit a person from disposing of his own solid waste, except hazardous waste, upon land owned or leased by that person or covered by easement or permit as long as it does not create a nuisance or public health hazard.

(b) A person may dispose of his own hazardous wastes upon land owned or leased by that person or covered by easement or permit after complying with the licensing requirements of this part and the rules adopted to regulate the disposal or transport of hazardous wastes.

(c) The exclusion contained in subsection (1)(a) of this section does not apply to a division of land of 5 acres or less made after July 1, 1977, which falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3.

(2) The licensing requirements of this part do not apply to the transportation of marketable hazardous wastes to a manufacturing or processing center.

History: En. Sec. 8, Ch. 35, L. 1965; amd. Sec. 4, Ch. 349, L. 1969; amd. Sec. 9, Ch. 542, L. 1977; R.C.M. 1947, 69-4008(1) thru (3), (5); amd. Sec. 12, Ch. 68, L. 1979.

75-10-215 through 75-10-220 reserved.

75-10-221. License required — application. (1) Except as provided in 75-10-214, no person may dispose of solid waste or hazardous waste, operate a solid waste management system, or transport hazardous waste without a license from the department.

(2) The department shall provide application forms for a license as provided in this part.

(3) The application shall contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and such other information as the department may by rule require.

History: En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977; R.C.M. 1947, 69-4004(1).

75-10-222. Notification of and validation by local health officer. (1) When the department receives an application for a license pursuant to the provisions of this part, the local health officer in the county where the solid waste management system will be located shall be notified in writing of the application within 15 days after the department has received the application.

(2) If the department decides to issue a license pursuant to the provisions of this part, the department shall notify the local health officer in writing.

(3) A license issued by the department under this section shall not be valid until signed by the local health officer having jurisdiction in the county in which the solid waste management system will be operated.

(4) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this part, make a final decision on whether the license will be validated.

History: En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977; R.C.M. 1947, 69-4004(part).

75-10-223. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this part upon a finding that the requirements of this part and the rules implementing this part cannot be satisfied. If the local health officer refuses to validate the license, he shall notify the applicant, the department, and any other interested person in writing.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the board within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the board shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977; R.C.M. 1947, 69-4004(part).

75-10-224. Revocation or denial of license by department. The department may deny or revoke a license to operate a solid waste management system after giving the applicant and the local health officer written notice and an opportunity for a hearing before the board. The decision to deny or revoke a license may be made only after a finding that a solid waste management system cannot be operated or is not being operated in compliance with this part or a rule or order issued pursuant to this part. The hearing held before the board on a denial or revocation shall be held pursuant to the provisions of the Montana Administrative Procedure Act.

History: **En. Sec. 6, Ch. 35, L. 1965; amd. Sec. 7, Ch. 542, L. 1977; R.C.M. 1947, 69-4006.**

75-10-225. Concurrent license and major facility siting decisions. If it is determined that an application for a certificate under the Montana Major Facility Siting Act, chapter 20 of this title, will result in the generation, transport, storage, or disposal of hazardous wastes as defined in this part, the department shall conduct its review under the provisions of this part concurrently with the studies of air and water quality conducted under the provisions of the Montana Major Facility Siting Act. A decision to grant or deny a license for the transport, storage, or disposal of hazardous wastes under the provisions of this part shall be appealable concurrently with and subject to the same procedures established for the appeal of the department's air and water quality certification decision under the Montana Major Facility Siting Act. If the initial license has been granted as specified in this section, all renewals or modifications of a license or enforcement actions concerning alleged violations of the license and the provisions of this part shall be conducted pursuant to the procedures and enforcement provisions established in this part.

History: **En. Sec. 8, Ch. 35, L. 1965; amd. Sec. 4, Ch. 349, L. 1969; amd. Sec. 9, Ch. 542, L. 1977; R.C.M. 1947, 69-4008(4).**

75-10-226 through 75-10-230 reserved.

75-10-231. Actions. The department may, through the attorney general or appropriate county attorney, initiate and maintain in district court enforcement actions as provided in this part, including actions to collect a criminal penalty or to enjoin the operation of a solid waste management system that is in violation of this part or a rule adopted by the department or order issued as provided in this part.

History: **En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(3).**

75-10-232. Penalty for violations. (1) (a) A person violating this part or regulations prescribed by the department under this part, except 75-10-212(2), is guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $500.

(b) A person who stores, treats, transports, or disposes of a hazardous waste in violation of this part, a rule adopted as authorized by this part, or an order issued as provided in this part is subject to a civil penalty of not more than $25,000.

(2) Each day upon which a violation occurs is a separate violation.

History: **Ap. p. Sec. 9, Ch. 35, L. 1965; amd. Sec. 5, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 10, Ch. 542, L. 1977; Sec. 69-4009, R.C.M. 1947; Ap. p. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4009, 69-4519(3), (4); amd. Sec. 13, Ch. 68, L. 1979.**

75-10-233. Dumping penalty — enforcement. Any person found guilty of a violation of 75-10-212(2) shall be fined in the sum not exceeding

$100 or imprisoned in the county jail for a period not exceeding 30 days or be punished by both such fine and imprisonment, in the discretion of the court. The provisions of 75-10-212(2) shall be enforced by all highway patrolmen, sheriffs, policemen, and all other enforcement agencies and officers of the state of Montana. In addition, game wardens shall have the right to enforce the provisions of 75-10-212(2) on public recreational property and on private property where public recreation is permitted.

History: En. Sec. 11-110, Ch. 197, L. 1965; amd. Sec. 1, Ch. 112, L. 1969; R.C.M. 1947, 32-4410(2), (3).

Parts 3 and 4 reserved

Part 5

Motor Vehicle Recycling and Disposal

75-10-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Junk vehicle" means a discarded, ruined, wrecked, or dismantled vehicle, including component parts, or a vehicle substantially changed in form by removal of parts or component materials and which is not lawfully and validly licensed and remains inoperative or incapable of being driven.

(4) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

(5) "Motor vehicle wrecking facility" means:

(a) a facility buying, selling, or dealing in four or more vehicles per year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

(b) a facility which buys or sells integral secondhand parts or component material thereof, in whole or in part, and deals in secondhand motor vehicle parts. A facility which buys or sells integral secondhand parts or component material of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(6) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(7) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

(8) "Shielding" means the construction or use of fencing or manmade or natural barriers to conceal junk vehicles from public view.

History: En. Sec. 1, Ch. 410, L. 1973; amd. Sec. 1, Ch. 251, L. 1977; amd. Sec. 1, Ch. 252, L. 1977; R.C.M. 1947, 69-6801.

75-10-502. Possession of junk vehicles as prima facie evidence of motor vehicle wrecking facility. Possession at a single location of four or more junk vehicles of a type required to be licensed is prima facie evidence that the possessor is operating a motor vehicle wrecking facility.

History: En. Sec. 3, Ch. 410, L. 1973; amd. Sec. 3, Ch. 252, L. 1977; R.C.M. 1947, 69-6803.

75-10-503. Adoption of rules. The department shall adopt rules necessary for the administration of this part, except 75-10-520, including but not limited to rules pertaining to:

(1) the establishment, control, operation, and licensing of motor vehicle wrecking facilities and graveyards;

(2) the control of junk vehicles in locations other than motor vehicle wrecking facilities and graveyards;

(3) the inspection and evaluation of premises and records subject to or required by this part;

(4) the development of budget and fiscal forms and procedures for counties;

(5) the review, approval, and control procedures for county motor vehicle graveyards developed under this part; and

(6) the shielding of a junk vehicle and motor vehicle wrecking facility and graveyard from public view. The department may not adopt a rule which requires the construction of a fence or manmade barrier which would be in excess of 12 feet in height.

History: En. Sec. 8, Ch. 410, L. 1973; amd. Sec. 6, Ch. 252, L. 1977; R.C.M. 1947, 69-6808(part).

Compiler's Comments

Relationship of part to new section. The words "except 75-10-520" were added to this section by the code commissioner to make it clear that 75-10-520 is not intended as an integral part of Title 75, chapter 10, part 5. Section 75-10-520 was enacted by Sec. 1, Ch. 244, L. 1979, without a codification instruction. It is codified in Title 75, chapter 10, part 5, for code user convenience. Penalty provisions and provisions relating to powers and duties of the department of health and environmental sciences have no application to 75-10-520.

75-10-504. Shielding — new facility. A new motor vehicle wrecking facility or graveyard site may not be approved for use or licensed if the proposed facility cannot be shielded from public view. The prohibition concerning approval of a new motor vehicle wrecking facility site does not apply to a facility site that has been used as such within the preceding 18 months.

History: En. Sec. 8, Ch. 410, L. 1973; amd. Sec. 6, Ch. 252, L. 1977; R.C.M. 1947, 69-6808(part).

75-10-505 through 75-10-510 reserved.

75-10-511. Motor vehicle wrecking facility and motor vehicle graveyard licenses. (1) A person may not conduct, maintain, or operate a motor vehicle wrecking facility or motor vehicle graveyard without a license issued by the department.

(2) Application for the license shall be made on forms furnished by the department.

(3) An annual fee of $50 shall be paid to the department for the license or quarterly prorated for new facilities.

(4) A motor vehicle graveyard is excluded from paying the annual license fee but must meet all other requirements of the part.

(5) A license shall be displayed in a prominent place in the licensed facility or graveyard.

(6) The license expires on December 31 of the year issued.

(7) If a motor vehicle wrecking facility ceases to do business, the license shall be surrendered to the department. The license is not transferable.

History: En. Sec. 2, Ch. 410, L. 1973; amd. Sec. 2, Ch. 252, L. 1977; R.C.M. 1947, 69-6802(1) thru (6).

75-10-512. Records required of facilities. (1) Every motor vehicle wrecking facility shall maintain books or files in which are kept a record and description of every junk vehicle obtained by it, together with the name of the person from whom the vehicle was purchased.

(2) This record shall also contain:

(a) the certificate of title or sheriff's certificate of sale or a written release from the former owner;

(b) the name of the state where the vehicle was last registered;

(c) the number of the last license plate;

(d) the make of the vehicle;

(e) the motor or identification number or serial number;

(f) the date purchased;

(g) the disposition of motor and chassis.

History: En. Sec. 4, Ch. 410, L. 1973; R.C.M. 1947, 69-6804(1), (2).

75-10-513. Disposal of junk vehicles — fees and records. When a motor vehicle wrecking facility submits a junk vehicle to the disposal program, it shall pay a disposal fee of $2 for each vehicle submitted and it shall surrender to the department all records maintained as required in 75-10-512, and the vehicle is then the property of the state.

History: En. Sec. 4, Ch. 410, L. 1973; R.C.M. 1947, 69-6804(3).

75-10-514. Denial, suspension, or revocation of license — grounds. The department may deny, suspend, or revoke a motor vehicle wrecking facility's license when it proves the business:

(1) sold or otherwise disposed of a motor vehicle, trailer, or any part thereof when it knew the vehicle or part was stolen or was appropriated without the consent of the owner;

(2) committed forgery on a certificate of title covering a vehicle that has been reassembled from parts obtained from the disassembling of other vehicles;

(3) committed any illegal act or omission which has caused loss as the result of a sale of a motor vehicle, trailer, or part thereof;

(4) failed to comply with this part or with a rule of the department;

(5) obtained a license fraudulently.

History: En. Sec. 9, Ch. 410, L. 1973; R.C.M. 1947, 69-6809.

75-10-515. Appeals. A decision by the department to issue, deny, or revoke a motor vehicle wrecking facility or graveyard license may be appealed to the board within 30 days after receipt of official notice of the department's decision.

History: En. Sec. 2, Ch. 410, L. 1973; amd. Sec. 2, Ch. 252, L. 1977; R.C.M. 1947, 69-6802(7).

75-10-516 through 75-10-519 reserved.

75-10-520. Disposal of damaged vehicle when insurance company settles at total loss. An insurance company settling an insurance claim on a damaged motor vehicle as a total loss less salvage may dispose of the motor vehicle at a motor vehicle wrecking facility only if it is licensed under the provisions of 75-10-511.

History: En Sec. 1, Ch. 244, L. 1979.

75-10-521. Motor vehicle graveyards — consolidation — budget. (1) Each county shall acquire, develop, and maintain property for free motor vehicle graveyards. The property may be acquired by purchase, lease, or otherwise.

(2) As an alternative, the county may contract for the maintenance and operation of a motor vehicle graveyard or graveyards, but any such contract may be entered into only with a motor vehicle wrecking facility licensed under the provisions of this part.

(3) Two or more counties may join to form a district for the purpose stated in this section. If a district is formed, all provisions of this part pertaining to a county also apply to a district formed under this subsection.

(4) When there is an accumulation of at least 200 junk vehicles in the graveyard, the county shall notify the department for disposal purposes.

(5) A county shall submit to the department for approval a plan for the collection of junk vehicles and the establishment and operation of the motor vehicle graveyard.

(6) Prior to June 15, the county shall submit to the department for approval a proposed budget for the succeeding fiscal year. The budget shall be for the amounts required by the county for collection costs and acquisition, maintenance, and operation of the graveyard. Any proposed change in the budget or plan must be approved by the department.

History: En. Sec. 5, Ch. 410, L. 1973; amd. Sec. 2, Ch. 251, L. 1977; R.C.M. 1947, 69-6805.

75-10-522. Use of motor vehicle graveyards by individuals. An individual may dispose of a junk vehicle by delivering the vehicle to a motor vehicle graveyard and by delivering to the department the certificate or evidence of title to the vehicle or a written release of the vehicle.

History: En. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977; R.C.M. 1947, 69-6806(4).

75-10-523 through 75-10-530 reserved.

75-10-531. Crushing and recycling of junk vehicles. (1) The department shall contract for final disposition of junk vehicles accumulated in motor vehicle graveyards and shall provide for crushing and recycling the material from the vehicles.

(2) The department may also contract to dispose of, by crushing and recycling, junk vehicles accumulated in the yard of a motor vehicle wrecking facility. The department may so contract only upon the request of the facility and only if there is an accumulation of at least 200 vehicles at the facility.

History: En. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977; R.C.M. 1947, 69-6806(1), (2).

75-10-532. Disposition of moneys collected. All moneys received from the sale of the junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees shall be deposited with the state treasurer to be utilized for the control, collection, recycling, and disposal of junk vehicles and component parts.

History: Ap. p. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977; Sec. 69-6806, R.C.M. 1947; Ap. p. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; Sec. 69-6807, R.C.M. 1947; R.C.M. 1947, 69-6806(3), 69-6807(1).

75-10-533. Department to report fees to legislature. The department shall report to each legislature the amount collected under this part and 61-3-508 and the cost of administration of this part, except 75-10-520, to date so that any necessary adjustment of the amount of the fee may be made to assure that no more than the actual cost of operation of the program is collected.

History: En. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; R.C.M. 1945, 69-6807(3).

Compiler's Comments

Relationship of part to new section. The words "except 75-10-520" were added to this section by the code commissioner to make it clear that 75-10-520 is not intended as an integral part of Title 75, chapter 10, part 5. Section 75-10-520 was enacted by Sec. 1, Ch. 244, L. 1979, without a codification instruction. It is codified in Title 75, chapter 10, part 5, for code user convenience. Penalty provisions and provisions relating to powers and duties of the department of health and environmental sciences have no application to 75-10-520.

75-10-534. Department to pay approved county budget. The department shall pay to a county the amount of the approved junk vehicle collection and graveyard budget of the county. The yearly payment may not exceed $1 for each motor vehicle under 8,001 pounds gross vehicle weight that is licensed in that county. However, for those counties that have fewer than 5,000 such motor vehicles, the department may pay up to $5,000, providing the county can justify this payment.

History: En. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; R.C.M. 1945, 69-6807(4).

75-10-535 through 75-10-540 reserved.

75-10-541. Injunction — action to collect civil penalty. (1) The department, through the attorney general or the county attorney of the county in which a facility is located, may sue to enjoin the operation or maintenance of a motor vehicle wrecking facility or graveyard either permanently or until compliance with this part, the rules of the department, or an order issued pursuant to this part has been demonstrated.

(2) The department, through the attorney general or the county attorney of the county in which a motor vehicle wrecking facility or graveyard is located, may sue in district court to collect a civil penalty as provided in 75-10-542.

History: En. Sec. 10, Ch. 410, L. 1973; amd. Sec. 7, Ch. 252, L. 1977; R.C.M. 1947, 69-6810.

75-10-542. Penalties. (1) A person who willfully violates this part, except 75-10-520, is guilty of a misdemeanor and upon conviction shall be fined not to exceed $250, imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued as provided in this part shall be subject to a civil penalty of not more than $50. Each day upon which a violation of this part or a rule or order occurs is a separate violation.

History: **En. 69-6812 by Sec. 2, Ch. 112, L. 1975; amd. Sec. 8, Ch. 252, L. 1977; R.C.M. 1947, 69-6812.**

Compiler's Comments

Relationship of part to new section. The words "except 75-10-520" were added to this section by the code commissioner to make it clear that 75-10-520 is not intended as an integral part of Title 75, chapter 10, part 5. Section 75-10-520 was enacted by Sec. 1, Ch. 244, L. 1979, without a codification instruction. It is codified in Title 75, chapter 10, part 5, for code user convenience. Penalty provisions and provisions relating to powers and duties of the department of health and environmental sciences have no application to 75-10-520.

CHAPTERS 11 THROUGH 14

RESERVED

CHAPTER 15

LANDSCAPE MANAGEMENT

Part 1 — Outdoor Advertising

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Part 1

Outdoor Advertising

75-15-101. Short title. This part may be cited as the "Outdoor Advertising Act".

History: En. Sec. 1, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4715(b).

75-15-102. Policy. The legislature finds and declares that in order to promote the safety, convenience, and enjoyment of travel on and protection of the public investment in highways within this state and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, it shall be the policy of this state that the erection and maintenance of outdoor advertising in areas adjacent to the right-of-way of the interstate and primary systems within this state shall be regulated in accordance with the terms of this part and the rules promulgated by the commission pursuant thereto. It is the intention of the legislature in this part to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to the interstate and primary systems declared by congress in Title 23, United States Code, "Highways".

History: En. Sec. 1, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4715(a).

75-15-103. Definitions. As used in this part, the following definitions apply:

(1) "Commercial or industrial activities" means for purposes of subsection (14) those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

(a) agricultural, forestry, grazing, farming, and related activities, including wayside fresh produce stands;

(b) transient or temporary activities;

(c) activities not visible from the main-traveled way;

(d) activities conducted in a building principally used as a residence;

(e) railroad tracks and minor sidings;

(f) activities more than 660 feet from the nearest edge of the right-of-way.

(2) "Commercial or industrial zone" means an area which is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances or regulations or enabling state legislation or state legislation itself, including highway service areas lawfully zoned as highway service zones, where the primary use of the land is or is reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public. Areas temporarily zoned as commercial or industrial by an interim regulation or map adopted as an emergency measure pursuant to 76-2-206 shall not be considered as covered by this definition.

(3) "Commission" means the highway commission of Montana.

(4) "Department" means the department of highways.

(5) "Information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as the commission may consider desirable.

(6) "Interchange" or "intersection" means those areas and their approaches where traffic is channeled off or onto an interstate route, including the deceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route.

(7) "Interstate system" means that portion of the national system of interstate and defense highways located within this state as officially designated or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(8) "Maintain" means to allow to exist, subject to the provisions of this part.

(9) "Maintenance" means to repair, refurbish, repaint, or otherwise keep an existing sign structure in a state suitable for use.

(10) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other structure which is designed, intended, or used to advertise or inform and which is visible from any place on the main-traveled way of the interstate or primary systems.

(11) "Primary system" means that portion of connected main highways as officially designated or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(12) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way, by or under public supervision or control, for the convenience of the traveling public.

(13) "Secretary" means the secretary of the United States department of transportation.

(14) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation, or ordinance which is occupied by one or more industrial or commercial activities, other than outdoor advertising, on the lands along the highway for a distance of 600 feet immediately adjacent to the activities and those lands directly opposite on the other side of the highway to the extent of the same dimensions and to a maximum depth of 660 feet when measured from the highway right-of-way; provided those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the commission.

(15) "Urban area" means an urbanized area or place, as designated by the United States bureau of the census, having a population of 5,000 or more and within boundaries fixed by the department of highways, which boundaries shall as a minimum encompass the entire urban place designated by said bureau of the census.

(16) "Visible" means capable of being seen and legible without visual aid by a person of normal visual acuity.

History: (1) thru (3), (5) thru (16)En. Sec. 2, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 89, L. 1974; amd. Sec. 1, Ch. 216, L. 1975; (4)En. by Code Commissioner, 1979; R.C.M. 1947, 32-4716.

75-15-104. More restrictive regulations preserved. Nothing in this part shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution which is more restrictive than the provisions of this part.

History: En. Sec. 11, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4725.

75-15-105. Relaxation of regulations if federal law changed. In the event the general requirements of Title 23, United States Code, "Highways", or existing rules and regulations of the United States department of transportation become amended or changed to less restrictive conditions than presently exist, then the commission must amend or change such rules that it may have adopted to come into conformity with the federal law, rule, and regulation; however, in no event shall this part become more restrictive than is indicated herein by said federal action.

History: En. Sec. 12, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4726.

75-15-106 through 75-15-110 reserved.

75-15-111. Outdoor advertising prohibited in proximity to highway — exceptions. (1) Outdoor advertising may not be erected or maintained which is within 660 feet of the nearest edge of the right-of-way and which is visible from any place on the main-traveled way of an interstate or primary system except:

(a) directional and other official signs and notices, which signs and notices include but are not limited to signs and notices pertaining to natural wonders and scenic and historical attractions, as authorized or required by law;

(b) signs, displays, and devices advertising the sale or lease of property upon which they are located;

(c) signs, displays, and devices advertising activities conducted on the property upon which they are located;

(d) signs, displays, and devices located in areas which are zoned industrial or commercial by a bona fide state, county, or local zoning authority;

(e) signs, displays, and devices located in unzoned commercial or industrial areas, which areas shall be determined from actual land uses and by agreement between the department of highways and the secretary and defined by rules adopted by the commission. The exception granted by this subsection shall not apply to signs, displays, and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of 9 months.

(2) Outdoor advertising authorized under subsections (a), (d), and (e) of (1) of this section shall conform with standards contained in and shall bear permits required in rules which are adopted by the commission and this part.

(3) Outdoor advertising may not be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area if such outdoor advertising is or was erected with the purpose of its message being read from such main-traveled way and visible from such main-traveled way unless such outdoor advertising meets the criteria of subsections (a), (b), or (c) of (1) of this section. Should such

outdoor advertising meet said criteria, it shall conform with standards contained in rules which are adopted by the commission and this part.

History: **En. Sec. 3, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 160, Ch. 316, L. 1974; amd. Sec. 2, Ch. 216, L. 1975; R.C.M. 1947, 32-4717.**

75-15-112. Unlawful advertising. Outdoor advertising is unlawful:

(1) when erected after June 24, 1971, contrary to this part or erected after June 24, 1971, beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area with the purpose of its message being read from such main-traveled way and visible from such main-traveled way, unless such outdoor advertising meets the criteria of subsections (a), (b), or (c) of 75-15-111(1);

(2) when a permit is not obtained as prescribed in this part; or

(3) when a permittee fails to comply with a notice of violation as provided in 75-15-132.

History: **En. Sec. 8, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 89, L. 1974; amd. Sec. 165, Ch. 316, L. 1974; amd. Sec. 5, Ch. 216, L. 1975; amd. Sec. 4, Ch. 234, L. 1977; R.C.M. 1947, 32-4722(1).**

75-15-113. Standards for permitted advertising. Except for outdoor advertising beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area, outdoor advertising permitted under subsections (1)(d) and (1)(e) of 75-15-111 shall conform to the following requirements:

(1) Signs may not be erected or maintained which exceed 1,200 square feet in area, including border and trim but excluding base or apron, supports, and other structural members.

(2) Maximum length, 60 feet.

(3) Maximum height, 40 feet as measured from the ground or, if the sign is attached to a structure, as measured from the base of the sign itself.

(4) No more than two facings visible and readable from the same direction on the main-traveled way may be erected on any one sign structure. Whenever two facings are so positioned, neither shall exceed 325 square feet.

(5) Double-faced, back-to-back, and V-type signs shall be considered as a single sign or structure.

(6) Where two or more faces, back to back, are supported by separate structures, each shall be considered a single sign.

(7) No two signs shall be spaced less than 500 feet apart adjacent to an interstate highway or limited-access primary highway, except that signs may be erected closer than 500 feet if they are separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distance is visible from the highway at any one time.

(8) Signs may not be located within 500 feet of any of the following which are adjacent to the highway unless the signs are in an incorporated area:

(a) public parks;

(b) public forests;

(c) public playgrounds;

(d) scenic areas designated as such by the highway department or other state agency having and exercising this authority;

(e) cemeteries.

(9) A sign may not be located on an interstate highway or freeway within 500 feet of an interchange or intersection at grade or rest area. The 500 feet

is to be measured along the interstate or freeway from the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way.

(10) Signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by a flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

(b) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at a portion of the traveled ways of the interstate or federal-aid primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle or which otherwise interfere with a driver's operation of a motor vehicle are prohibited.

(c) A sign may not be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device, or signal.

(11) The location of sign structures situated on the primary highways between streets, roads, or highways entering or intersecting the main-traveled way shall conform to the following minimum spacing criteria:

(a) Where the distance between centerlines of intersecting streets or highways is less than 1,000 feet, a minimum spacing between structures of 150 feet may be permitted between the intersecting streets or highways.

(b) Where the distance between centerlines of intersecting streets or highways is 1,000 feet or more, minimum spacing between sign structures shall be 300 feet.

History: En. Sec. 5, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 2, Ch. 89, L. 1974; amd. Sec. 162, Ch. 316, L. 1974; amd. Sec. 3, Ch. 216, L. 1975; R.C.M. 1947, 32-4719; amd. Sec. 1, Ch. 45, L. 1979.

75-15-114 through 75-15-120 reserved.

75-15-121. Commission rules authorized. The commission may adopt rules to control the erection and maintenance of outdoor advertising along the interstate and primary highway systems in conformance with the terms of this part and in conformity with section 131 of Title 23, United States Code, as amended.

History: En. Sec. 4, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 161, Ch. 316, L. 1974; R.C.M. 1947, 32-4718.

75-15-122. Permits required — identification tags — preexisting structures. (1) A sign authorized by subsections (a), (d), and (e) of 75-15-111(1) may not be constructed or maintained without a permit. Applications for permits shall be made to the department on forms furnished by it. The department shall require reasonable information to be furnished, including a statement that the owner or occupant of the land has consented to the erection or maintenance of the sign on the land. A permit must be obtained for each sign, and the application for the permit must be accompanied by an initial fee of $6.

(2) Permits shall be issued for 3 years, assigned a permit number, and renewed every 3 years thereafter upon payment of $3 without the filing of a new application. All fees received shall be paid into the highway account in the earmarked revenue fund.

(3) The department shall issue with each new permit a permanent identification tag not larger than 36 square inches which shall be affixed to the sign in a position readily visible from the highway.

(4) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags upon application and payment of the requisite fee for a structure lawfully in existence on June 23, 1971, and the permits shall thereafter be renewed for a period of time as is prescribed in this section unless the structure is removed for improper maintenance.

(5) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags upon application and payment of the requisite fee for outdoor advertising lawfully in existence on June 23, 1971, and made nonconforming by virtue of 75-15-111(3), and the permits shall thereafter be renewed for a period of time as is prescribed in this section unless the structure is removed for improper maintenance.

History: En. Sec. 6, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 163, Ch. 316, L. 1974; amd. Sec. 1, Ch. 22, L. 1975; amd. Sec. 4, Ch. 216, L. 1975; R.C.M. 1947, 32-4720.

75-15-123. Acquisition of outdoor advertising rights — compensation. (1) The department may acquire by gift, purchase, agreement, exchange, or eminent domain existing outdoor advertising and property rights pertaining to advertising that was lawfully in existence on June 24, 1971, and which by virtue of 75-15-111(1) is nonconforming. Eminent domain shall be exercised in accordance with the laws of the state.

(2) Just compensation shall be paid for outdoor advertising and property rights pertaining to the advertising acquired through the process of eminent domain. The department may remove outdoor advertising found in violation of 75-15-112 or 75-15-132 without payment of compensation.

(3) Except as provided in 75-15-131 and 75-15-132, a sign may not be required to be removed unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section and unless at that time the federal funds required to be contributed under section 131(g) of Title 23, United States Code, with respect to the outdoor advertising being removed have been apportioned and are immediately available to this state.

History: En. Sec. 9, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 166, Ch. 316, L. 1974; amd. Sec. 6, Ch. 216, L. 1975; R.C.M. 1947, 32-4723(part); amd. Sec. 14, Ch. 68, L. 1979.

75-15-124. Agreements with secretary establishing specifications for advertising. The department may enter into an agreement with the secretary regarding the size, lighting, and spacing of outdoor advertising, as provided in this part, which may be erected and maintained within the areas adjacent to the interstate and primary highway system which are zoned commercial, industrial, or in such other unzoned commercial or industrial areas as may be determined by agreement and as provided in this part.

History: En. Sec. 10, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 167, Ch. 316, L. 1974; R.C.M. 1947, 32-4724.

75-15-125 through 75-15-130 reserved.

75-15-131. Entry to inspect — notice of unlawful advertising — remedial action. (1) The department may enter upon lands bearing outdoor advertising and make examination of such advertising.

(2) The department shall give notice in writing, either by certified mail or by personal service, to the owner or occupant of the land on which advertising believed to be unlawful is located and to the owner of the outdoor advertising structure if the latter is known or, if unknown, by posting notice in a conspicuous place on the structure of its intention to remove the unlawful advertising. Within 45 days after the notice, the owner of the land or of the structure may make a written request for a hearing before the commission to show cause why the structure should not be removed.

(3) If a hearing before the commission is not requested or if there is no appeal taken from the commission's decision at the hearing or if the commission's decision is affirmed on appeal, the department shall immediately remove or cause to be removed the unlawful outdoor advertising. The department may, upon final determination by the commission that an item of outdoor advertising is unlawful, enter upon lands bearing such advertising and remove the unlawful advertising.

(4) The owner of the structure and the owner or occupant of the land are jointly and severally liable for the costs of the removal.

History: En. Sec. 8, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 89, L. 1974; amd. Sec. 165, Ch. 316, L. 1974; amd. Sec. 5, Ch. 216, L. 1975; amd. Sec. 4, Ch. 234, L. 1977; R.C.M. 1947, 32-4722(2), (3).

75-15-132. False application or disrepair of structure — remedial action. When the department determines that a willful false or misleading statement has been made in the application for a permit or that the structure for which a permit was issued is not in a reasonable state of repair or is unsafe, the department shall notify the holder of the permit in writing, either by certified mail or by personal service, of the violation and specify that remedial action shall be taken within 60 days or the permit will be revoked and action for removal of the sign commenced as provided in 75-15-131. No notice is required prior to filing a complaint after the notice period has lapsed.

History: En. Sec. 7, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 164, Ch. 316, L. 1974; R.C.M. 1947, 32-4721.

75-15-133. Nonconforming advertising as nuisance. All outdoor advertising which does not conform to the requirements of this part is a public nuisance.

History: En. Sec. 16, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 140, L. 1977; R.C.M. 1947, 32-4728.

75-15-134. Violation as misdemeanor. Any person violating any provision of this part is guilty of a misdemeanor.

History: En. Sec. 15, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4727.

Part 2

Junkyards

75-15-201. Purposes. (1) For the purposes of promoting the public safety, health, and welfare and the convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the interstate and primary systems within this state.

(2) The legislature hereby finds and declares that junkyards which do not conform to the requirements of this part are public nuisances.

History: En. Sec. 1, Ch. 285, L. 1967; R.C.M. 1947, 32-4513.

75-15-202. Interpretation. Nothing in this part shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution which is more restrictive than the provisions of this part.

History: En. Sec. 11, Ch. 285, L. 1967; R.C.M. 1947, 32-4523.

75-15-203. Definitions. As used in this part only, the following definitions apply:

(1) "Automobile graveyard" means any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(2) "Interstate system" means that portion of the national system of interstate and defense highways located within this state as officially designated or as may hereafter be so designated by the state highway commission and approved by the secretary of transportation pursuant to the provisions of Title 23, United States Code, "Highways".

(3) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, or waste; junked, dismantled, or wrecked automobiles (or parts thereof); iron, steel, and other old or scrap ferrous or nonferrous material.

(4) "Junkyard" means any establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk or for the maintenance or operation of an automobile graveyard or a garbage dump or sanitary fill.

(5) "Primary system" means that portion of connected main highways as officially designated or as may hereafter be so designated by the commission and approved by the secretary of transportation pursuant to the provisions of Title 23, United States Code, "Highways".

History: En. Sec. 2, Ch. 285, L. 1967; R.C.M. 1947, 32-4514.

75-15-204. Agreements with the United States. The department of highways may enter into agreements with the United States secretary of transportation as provided in Title 23, United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems and take action in the name of the state to comply with the terms of those agreements.

History: En. Sec. 10, Ch. 285, L. 1967; amd. Sec. 159, Ch. 316, L. 1974; R.C.M. 1947, 32-4522.

75-15-205. Injunction. The department of highways may apply to the district court for the county in which is located any junkyard not conforming to the requirements of this part for an injunction to abate such nuisance.

History: En. Sec. 9, Ch. 285, L. 1967; amd. Sec. 158, Ch. 316, L. 1974; R.C.M. 1947, 32-4521.

75-15-206 through 75-15-210 reserved.

75-15-211. License required. No person shall establish, operate, or maintain a junkyard, any portion of which is within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway, without obtaining a license.

History: En. Sec. 3, Ch. 285, L. 1967; amd. Sec. 12, Ch. 410, L. 1973; R.C.M. 1947, 32-4515.

75-15-212. Issuance of license — appeals. (1) The department of health and environmental sciences may issue licenses for the establishment, maintenance, and operation of motor vehicle wrecking facilities and graveyards as provided in chapter 10, part 5, of this title.

(2) The issuance, denial, or revocation of a license under the provisions of chapter 10, part 5, may, on the basis of 75-15-223, be appealed to the board of health and environmental sciences.

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973; amd. Sec. 9, Ch. 252, L. 1977; R.C.M. 1947, 32-4516(1).

75-15-213. Highways as party — mandatory purchases. The department of highways may object to and participate as a party in all decisions concerning the issuance, denial, or revocation of a license under the provisions of chapter 10, part 5, if the facility in question is within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway. If the department of highways objects to the licensing of a facility pursuant to this section, it shall proceed under the provisions of 75-15-223(2).

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973; amd. Sec. 9, Ch. 252, L. 1977; R.C.M. 1947, 32-4516(2).

75-15-214. Highways to issue license for certain junkyards. (1) The department of highways may issue a license for a junkyard that is not a motor vehicle wrecking facility as defined in chapter 10, part 5, of this title.

(2) Nothing in 75-15-212 through 75-15-214 prohibits the department of highways from acquiring an interest in land for screening purposes or paying for screening installation and materials as authorized by this part.

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973; amd. Sec. 9, Ch. 252, L. 1977; R.C.M. 1947, 32-4516(3), (4).

75-15-215. Restrictions as to location. No license may be granted for the establishment, maintenance, or operation of a junkyard within 1,000 feet of the nearest edge of the right-of-way of a highway on the interstate or primary systems except a license may be granted for a junkyard:

(1) screened by natural objects, planted objects, fences, or other appropriate means so as not to be visible from the main-traveled way of any such highway or otherwise removed from sight;

(2) located within an area zoned for industrial use under authority of law;

(3) located within an unzoned industrial area, as determined from actual land uses and defined by rules promulgated by the department of highways;

(4) that is not visible from the main-traveled way of any such highway.

History: En. Sec. 5, Ch. 285, L. 1967; R.C.M. 1947, 32-4517; amd. Sec. 15, Ch. 68, L. 1979.

75-15-216 through 75-15-220 reserved.

75-15-221. Repealed. Sec. 2, Ch. 61, L. 1979.

75-15-222. Rules governing screening. (1) The department of health and environmental sciences shall adopt rules governing the screening or shielding of motor vehicle wrecking facilities as provided in chapter 10, part 5, of this title.

(2) The department of highways may adopt rules governing the materials to be used in and the location, planting, construction, and maintenance of screening or fencing required by this part.

(3) The department of highways may determine that in the best interests of the state, additional screening is required of certain junkyards or motor vehicle wrecking facilities licensed under this title. The cost of any additional screening shall be borne or reimbursed by the department of highways.

History: En. Sec. 7, Ch. 285, L. 1967; amd. Sec. 156, Ch. 316, L. 1974; amd. Sec. 10, Ch. 252, L. 1977; R.C.M. 1947, 32-4519; amd. Sec. 1, Ch. 61, L. 1979.

75-15-223. Authority to acquire interest in land for screening and removal of junkyards. (1) When the department of highways determines that it is in the best interests of the state, it may acquire such lands or interests in lands as may be necessary to provide adequate screening.

(2) When the department of highways determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange, or condemnation such interests in lands as may be necessary to secure the relocation, removal, or disposal of junkyards which were either lawfully:

(a) in existence on October 22, 1965;

(b) along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or

(c) established on or after January 1, 1968.

(3) The department of highways shall pay just compensation to the owner for the relocation, removal, or disposal of any such junkyard.

History: En. Sec. 8, Ch. 285, L. 1967; amd. Sec. 157, Ch. 316, L. 1974; R.C.M. 1947, 32-4520.

CHAPTERS 16 THROUGH 19

RESERVED

CHAPTER 20

MAJOR FACILITY SITING

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Part 1

Policy and General Provisions

75-20-101. Short title. This chapter shall be known and may be cited as the "Montana Major Facility Siting Act".

History: En. Sec. 1, Ch. 327, L. 1973; amd. Sec. 1, Ch. 494, L. 1975; R.C.M. 1947, 70-801.

75-20-102. Policy and legislative findings. (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(2) The legislature finds that the construction of additional power or energy conversion facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a power or energy conversion facility may not be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this chapter.

History: En. Sec. 2, Ch. 327, L. 1973; amd. Sec. 2, Ch. 494, L. 1975; R.C.M. 1947, 70-802.

75-20-103. Chapter supersedes other laws or rules. This chapter supersedes other laws or regulations except as provided in 75-20-401. If any provision of this chapter is in conflict with any other law of this state or any rule promulgated thereunder, this chapter shall govern and control and the other law or rule shall be deemed superseded for the purpose of this chapter. Amendments to this chapter shall have the same effect.

History: En. Sec. 23, Ch. 327, L. 1973; amd. Sec. 23, Ch. 494, L. 1975; R.C.M. 1947, 70-823; amd. Sec. 1, Ch. 676, L. 1979.

75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the certificate was issued.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries, and facilities and associated facilities designed for or capable of producing, gathering, processing, transmitting, transporting, or distributing crude oil or natural gas, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of $250,000;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of $250,000;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $250,000;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $250,000; or

(v) utilizing, refining, or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $250,000;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(c) each pipeline and associated facilities designed for or capable of transporting gas (except for natural gas), water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection (10)(a) of this section;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $250,000;

(e) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use.

History: En. Sec. 3, Ch. 327, L. 1973; amd. Sec. 1, Ch. 231, L. 1974; amd. Sec. 1, Ch. 268, L. 1974; amd. Sec. 3, Ch. 494, L. 1975; R.C.M. 1947, 70-803; amd. Sec. 1, Ch. 133, L. 1979; amd. Sec. 1, Ch. 527, L. 1979; amd. Sec. 2, Ch. 676, L. 1979.

Compiler's Comments

Effective date. Sec. 2, Ch. 527, L. 1979, provided: "This act is effective on passage and approval." Approved April 10, 1979.

75-20-105. Adoption of rules. The board may adopt rules implementing the provisions of this chapter, including but not limited to:

(1) rules governing the form and content of applications;

(2) rules further defining the terms used in this chapter;

(3) rules governing the form and content of long-range plans;

(4) any other rules the board considers necessary to accomplish the purposes and objectives of this chapter.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(1).

75-20-106. Contracts for information. (1) The department may contract with a potential applicant under this chapter in advance of the filing of a formal application for the development of information or provision of services required hereunder.

(2) Payments made to the department under such a contract shall be credited against the fee payable hereunder.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(2)(c).

75-20-107 through 75-20-110 reserved.

75-20-111. Grants, gifts, and funds. The department may receive grants, gifts, and other funds from any public or private source to assist in its activities under this chapter.
History: En. Sec. 22, Ch. 327, L. 1973; amd. Sec. 22, Ch. 494, L. 1975; R.C.M. 1947, 70-822.

75-20-112. Moneys to earmarked revenue fund. All fees, taxes, fines, and penalties collected under this chapter shall be deposited in the earmarked revenue fund for use by the department in carrying out its functions and responsibilities under this chapter.
History: En. 70-824 by Sec. 3, Ch. 270, L. 1975; R.C.M. 1947, 70-824.

Part 2

Certification Proceedings

75-20-201. Certificate required — operation in conformance — approval by popular vote of certificate for nuclear facility. (1) A person may not commence to construct a facility in the state without first applying for and obtaining a certificate of environmental compatibility and public need issued with respect to the facility by the board.

(2) A facility with respect to which a certificate is issued may not thereafter be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained therein.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the board decides to issue a certificate for a nuclear facility, it shall report such recommendation to the applicant and may not issue the certificate until such recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.
History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(1); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978.

75-20-202. Exemptions. (1) This chapter does not apply to any aspect of a facility over which an agency of the federal government has exclusive jurisdiction, but applies to any unpreempted aspect of a facility over which an agency of the federal government has partial jurisdiction.

(2) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(3) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that would otherwise be covered by this chapter and that is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods.
History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(3) thru (5); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978.

75-20-203. Certificate transferable. A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms, conditions, and modifications contained therein.
History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(2); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978; amd. Sec. 3, Ch. 676, L. 1979.

75-20-204 through 75-20-210 reserved.

75-20-211. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department and department of health a joint application for a certificate under this chapter and for the permits required by state air and water quality laws in such form as the board requires under applicable rules, containing the following information:

(i) a description of the location and of the facility to be built thereon;

(ii) a summary of any studies which have been made of the environmental impact of the facility;

(iii) a statement explaining the need for the facility;

(iv) a description of reasonable alternate locations for the proposed facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility;

(v) baseline data for the primary and reasonable alternate locations;

(vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vii) such other information as the applicant considers relevant or as the board and board of health by rule or the department and department of health by order require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination which are physically and directly attached to each other and are operationally a single operating entity.

(3) An application shall be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility may be located, both as primarily and as alternatively proposed and on the following state government agencies:

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) department of state lands;

(e) department of community affairs;

(f) department of highways;

(g) department of revenue.

(4) The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application shall also be accompanied by proof that public notice thereof was given to persons residing in the area or alternative areas in which any portion of the proposed facility may be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application.

History: **En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(part); amd. Sec. 1, Ch. 553, L. 1979; amd. Sec. 4, Ch. 676, L. 1979.**

Compiler's Comments

Waiver of baseline data requirement if existing contract. Sec. 26, Ch. 676, L. 1979, provided: "The department may in its discretion waive the requirement that baseline data for the primary and reasonable alternate locations be submitted with an application under 75-20-211(1)(a)(v) in those cases in which the applicant has, prior to July 1, 1979, entered into a contract with the department to compile baseline information."

Composite section. This section was amended by Ch. 553 and Ch. 676, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Subsection (3) regarding persons and agencies to be served with a copy of an application was amended by both of the above chapters. Ch. 676 deleted "chief executive officer of each" but the Code Commissioner reinserted this phrase to incorporate the change by Ch. 553 from "municipality" to "unit of local government".

75-20-212. Cure for failure of service. Inadvertent failure of service on or notice to any of the municipalities, government agencies, or persons identified in 75-20-211(3) and (5) may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(part).

75-20-213. Supplemental material — amendments. (1) An application for an amendment of an application or a certificate shall be in such form and contain such information as the board by rule or the department by order prescribes. Notice of such an application shall be given as set forth in (3), (4), and (5) of 75-20-211.

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department, the department of health, or the agencies listed in 75-20-216(5) from carrying out their duties and responsibilities under this chapter, the department may require such additional filing fees as the department determines necessary, or the department may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required shall be conclusive.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(6); amd. Sec. 5, Ch. 676, L. 1979.

75-20-214. Notice of intent to file. A potential applicant for a certificate may file a notice of intent to file an application for a certificate for a facility defined in 75-20-104(10) at least 12 months prior to the actual filing of an application. The notice of intent shall specify the type and size of facility to be applied for, its preferred location, a description of reasonable alternative locations, and such information as the board by rule or department by order requires. An applicant complying with this section is entitled to a 5% reduction of the filing fee required under 75-20-215.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(7); amd. Sec. 6, Ch. 676, L. 1979.

75-20-215. Filing fee — accountability — refund — use. (1) (a) A filing fee shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter, but which shall not exceed the following scale based upon the estimated cost of the facility:

(i) 2% of any estimated cost up to $1 million; plus

(ii) 1% of any estimated cost over $1 million and up to $20 million; plus

(iii) 0.5% of any estimated cost over $20 million and up to $100 million; plus

(iv) 0.25% of any amount of estimated cost over $100 million and up to $300 million; plus

(v) .125% of any amount of estimated cost over $300 million.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required hereunder or required for preparation of an environmental impact statement under the Montana or national environmental policy acts. The applicant may submit the information to the department together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount which may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under such a contract shall be credited against the fee payable hereunder. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, the department of health, the board, the board of health, and the agencies listed in 75-20-216(5) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) above upon 30 days' notice to the applicant. The department and applicant may enter into a contract which exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that no one installment may exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of moneys expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under

this chapter. A refund shall be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The revenues derived from filing fees shall be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(2)(a), (2)(b); amd. Sec. 7, Ch. 676, L. 1979.

75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. (1) After receipt of an application, the department and department of health shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and list the deficiencies therein; and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department and department of health shall use, to the extent they consider applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health shall within 1 year following the date of acceptance of an application, and the board of health, if applicable, within an additional 6 months, issue any decision, opinion, order, certification, or permit required by state or federal air and water quality laws and this chapter. The department of health and the board of health shall determine compliance with air and water quality standards and implementation plans for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters of air and water quality impacts under the federal and state air and water quality statutes that the department of health and board of health administer, and any of the criteria specified in 75-20-503(3) and (4) that are a part of the determinations made under federal and state air and water quality statutes. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). The decision, opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board and shall be utilized as

part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide an opportunity for public review and comment. A decision by the department of health or board of health is subject to appellate review pursuant to the air and water quality statutes administered by the department of health and board of health.

(4) Within 22 months following acceptance of an application for a facility as defined in (a) and (d) of 75-20-104(10) and for a facility as defined in (b) and (c) of 75-20-104(10) which is more than 30 miles in length and within 1 year for a facility as defined in (b) and (c) of 75-20-104(10) which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of highways; community affairs; fish, wildlife, and parks; state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1945, 70-807(1), (2); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 8, Ch. 676, L. 1979.

75-20-217. Voiding an application. An application may be voided by the department for:

(1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(2) failure to file an application in substantially the form and content required by this chapter and the rules adopted thereunder; or

(3) failure to deposit the filing fee as provided in 75-20-215.

History: En. Sec. 18, Ch. 327, L. 1973; amd. Sec. 18, Ch. 494, L. 1975; R.C.M. 1947, 70-818(2); amd. Sec. 9, Ch. 676, L. 1979.

75-20-218. Hearing date — location — department to act as staff — hearings to be held jointly. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. Except for those hearings involving applications submitted for facilities as defined in (b) and (c) of 75-20-104(10), certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion thereof is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may

request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the duly authorized state air and water quality agencies shall hold any required permit hearings required under laws administered by those agencies in conjunction with the board certification hearing. In such a conjunctive hearing the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the duly authorized state air and water quality agencies.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1947, 70-807(4); amd. Sec. 10, Ch. 676, L. 1979.

75-20-219. Amendments to a certificate. (1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1) including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility other than as provided in the alternates set forth in the original application. If the department determines that the proposed change would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify the amendment with such conditions as it deems appropriate.

(2) In those cases where the department determines that the proposed change in the facility would not result in any material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall automatically grant the amendment either as applied for or upon such terms or conditions as the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If a hearing is required, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If an amendment is required to a certificate which would affect, amend, alter or modify a decision, opinion, order, certification, or permit issued by the department of health or board of health, such amendment must be processed under the applicable statutes administered by the department of health or board of health.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1947, 70-807(3); amd. Sec. 11, Ch. 676, L. 1979.

75-20-220. Hearing examiner — restrictions — duties. (1) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board, an employee of the department, or a member or employee of the department of health or board of health. A hearing examiner, if any, shall be appointed by the board within 20 days after the department's report has been filed with the board. If a hearing is held before the board of health, the board and the board of health shall mutually agree on the appointment of a hearing examiner to preside at both hearings.

(2) A prehearing conference shall be held following notice within 60 days after the department's report has been filed with the board.

(3) The prehearing conference shall be organized and supervised by the hearing examiner.

(4) The prehearing conference shall be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties, all direct testimony which they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on shall be submitted and served in like manner, at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery which shall be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing shall proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised which are to be conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board and in the case of a conjunctive hearing, within 90 days to the board and the board of health proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall insure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) of this section to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed.

History: En. Sec. 9, Ch. 327, L. 1973; amd. Sec. 9, Ch. 494, L. 1975; R.C.M. 1947, 70-809(3); amd. Sec. 12, Ch. 676, L. 1979.

75-20-221. Parties to certification proceeding — waiver — statement of intent to participate. (1) The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion, order, certification, or permit by the board of health under this chapter may include as active parties:

(a) the applicant;

(b) each political entity, unit of local government, and government agency, including the department of health, entitled to receive service of a copy of the application under 75-20-211(3);

(c) any person entitled to receive service of a copy of the application under 75-20-211(5);

(d) any nonprofit organization formed in whole or in part to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent commercial and industrial groups; or to promote the orderly development of the areas in which the facility is to be located;

(e) any other interested person who establishes an interest in the proceeding.

(2) The department shall be an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.

(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in (b), (c), (d), or (e) of subsection (1).

(4) Any party waives the right to be a party if the party does not participate in the hearing before the board or the board of health.

(5) Each unit of local government entitled to receive service of a copy of the application under 75-20-211(3) shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. If the unit of local government does not intend to particpate, it shall list in this statement its reasons for failing to do so. This statement of intent shall be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government.

History: En. Sec. 8, Ch. 327, L. 1973; amd. Sec. 8, Ch. 494, L. 1975; R.C.M. 1947, 70-808; amd. Sec. 2, Ch. 553, L. 1979; amd. Sec. 13, Ch. 676, L. 1979.

75-20-222. Record of hearing — procedure — rules of evidence — burden of proof. (1) Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon shall be made a part of the record.

(2) A record shall be made of the hearing and of all testimony taken.

(3) In a certification proceeding held under this chapter, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of 75-20-301 are met.

(4) All proceedings under this chapter are governed by the procedures set forth in this chapter, the procedural rules adopted by the board, and the Montana Rules of Evidence unless one or more rules of evidence are waived by the hearing examiner upon a showing of good cause by one or more of

the parties to the hearing. No other rules of procedure or evidence shall apply except that the contested case procedures of the Montana Administrative Procedure Act shall apply if not in conflict with the procedures set forth in this chapter or the procedural rules adopted by the board.

History: En. Sec. 9, Ch. 327, L. 1973; amd. Sec. 9, Ch. 494, L. 1975; R.C.M. 1947, 70-809(1), (2); amd. Sec. 14, Ch. 676, L. 1979.

Part 3

Decisions

75-20-301. Decision of board — findings necessary for certification. (1) Within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it shall find and determine:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in 75-20-503;

(e) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct shall be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience, and necessity;

(h) that the department of health or board of health have issued a decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) of this section;

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities.

History: En. Sec. 10, Ch. 327, L. 1973; amd. Sec. 10, Ch. 494, L. 1975; R.C.M. 1947, 70-810(1), (3), (4); amd. Sec. 1, Ch. 69, L. 1979; amd. Sec. 15, Ch. 676, L. 1979.

75-20-302. Conditions imposed. If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

History: En. Sec. 10, Ch. 327, L. 1973; amd. Sec. 10, Ch. 494, L. 1975; R.C.M. 1947, 70-810(2); amd. Sec. 16, Ch. 676, L. 1979.

75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons therefor.

(3) Any certificate issued by the board shall include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facility;

(v) a plan for monitoring environmental effects of the proposed facility; and

(vi) a time limit as provided in subsection (4), during which construction of the facility must be completed;

(b) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) The board shall issue as part of the certificate the following time limits during which construction of a facility must be completed:

(a) For a facility as defined in (b) or (c) of 75-20-104(7) that is more than 30 miles in length, the time limit is 10 years.

(b) For a facility as defined in (b) or (c) of 75-20-104(7) that is 30 miles or less in length, the time limit is 5 years.

(c) The time limit shall be extended for periods of 2 years each upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction. Under this subsection, a good faith effort to complete construction includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced.

History: **En. Sec. 11, Ch. 327, L. 1973; amd. Sec. 11, Ch. 494, L. 1975; R.C.M. 1947, 70-811(1), (2); amd. Sec. 1, Ch. 120, L. 1979.**

Compiler's Comments

Effective date. Sec. 2, Ch. 120, L. 1979, provided: "This act is effective on passage and approval." Approved March 19, 1979."

75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a utility or person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

History: **En. Sec. 11, Ch. 327, L. 1973; amd. Sec. 11, Ch. 494, L. 1975; R.C.M. 1947, 70-811(3), (4); amd. Sec. 17, Ch. 676, L. 1979.**

Part 4

Postcertification and Legal Responsibilities

75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions. (1) Notwithstanding any other law, no state or regional agency or municipality or other local government may require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the state air and water quality agency or agencies shall retain authority which they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility.

History: **En. Sec. 17, Ch. 327, L. 1973; amd. Sec. 17, Ch. 494, L. 1975; R.C.M. 1947, 70-817; amd. Sec. 18, Ch. 676, L. 1979.**

75-20-402. Monitoring. The board, the department, the department of health, and the board of health shall monitor the operations of all certificated facilities for assuring continuing compliance with this chapter and certificates issued hereunder and for discovering and preventing noncompliance with this chapter and the certificates. The applicant shall pay all expenses related to the monitoring plan established in subsection (3)(a)(v) of 75-20-303 to the extent federal funds available for the facility, as determined by the department of health, have not been provided for such purposes.

History: **En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(2); amd. Sec. 19, Ch. 676, L. 1979.**

75-20-403. Revocation or suspension of certificate. A certificate may be revoked or suspended by the board:

(1) for any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the board's refusal to grant a certificate;

(2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) for violation of any provision of this chapter, the rules issued thereunder, or orders of the board or department.

History: **En. Sec. 18, Ch. 327, L. 1973; amd. Sec. 18, Ch. 494, L. 1975; R.C.M. 1947, 70-818(1).**

75-20-404. Enforcement of chapter by residents. (1) A resident of this state with knowledge that a requirement of this chapter or a rule adopted under it is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this chapter or a rule adopted under it is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

History: **En. Sec. 19, Ch. 327, L. 1973; amd. Sec. 19, Ch. 494, L. 1975; R.C.M. 1947, 70-819(1), (2).**

75-20-405. Action to recover damages to water supply. An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedies enumerated in this section do not exclude the use of any other remedy which may be available under the laws of the state.

History: En. Sec. 19, Ch. 327, L. 1973; amd. Sec. 19, Ch. 494, L. 1975; R.C.M. 1947, 70-819(3).

75-20-406. Judicial review of board decision. (1) Any active party as defined in 75-20-221 aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction.

(2) The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act.

History: En. Sec. 12, Ch. 327, L. 1973; amd. Sec. 12, Ch. 494, L. 1975; R.C.M. 1947, 70-812; amd. Sec. 20, Ch. 676, L. 1979.

75-20-407. Jurisdiction of courts restricted. Except as expressly set forth in 75-20-401, 75-20-406, and 75-20-408, no court of this state has jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the board under this chapter or to stop or delay the construction, operation, or maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate issued hereunder pursuant to 75-20-404 and 75-20-405 or 75-20-408.

History: En. Sec. 13, Ch. 327, L. 1973; amd. Sec. 13, Ch. 494, L. 1975; R.C.M. 1947, 70-813.

75-20-408. Penalties for violation of chapter — civil action by attorney general. (1) (a) Whoever commences to construct or operate a facility without first obtaining a certificate required under 75-20-201 or a waiver thereof under 75-20-304(2) or having first obtained a certificate, constructs, operates, or maintains a facility other than in compliance with the certificate or violates any other provision of this chapter or any rule or order adopted thereunder or knowingly submits false information in any report, 10-year plan, or application required by this chapter or rule or order adopted thereunder or causes any of the aforementioned acts to occur is liable for a civil penalty of not more than $10,000 for each violation.

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the first judicial district of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than $10,000 for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsections (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to enforce this chapter or a certificate issued hereunder. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(4) The department shall also enforce this chapter and bring legal actions to accomplish the enforcement through its own legal counsel.

(5) All fines and penalties collected shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter.

History: En. Sec. 21, Ch. 327, L. 1973; amd. Sec. 2, Ch. 270 L. 1975; amd. Sec. 21, Ch. 494, L. 1975; R.C.M. 1947, 70-821; amd. Sec. 16, Ch. 68, L. 1979; amd. Sec. 21, Ch. 676, L. 1979.

75-20-409. Optional annual installments for location of facility on landowner's property. A landowner upon whose land a facility is proposed to be located shall have the option of receiving any negotiated settlement for use of his land, if and when the land is used for a facility, by easement, right-of-way, or other legal conveyance in either a lump sum or in not more than five consecutive annual installments.

History: En. Sec. 1, Ch. 71, L. 1979.

75-20-410. Order not stayed by appeal — stay or suspension by court — limitations. Notwithstanding any contrary provision in the law, the pendency of an appeal from a board order does not automatically stay or suspend the operation of the order. During the pendency of the appeal, the court may upon motion by one of the parties stay or suspend, in whole or in part, the operation of the board's orders on terms the court considers just. The court's action must be in accordance with the practice of courts exercising equity jurisdiction, subject to the following limitations:

(1) No stay may be granted without notice to the parties and an opportunity to be heard by the court.

(2) No board order may be stayed or suspended without finding that irreparable damage would otherwise result to the party seeking the stay or suspension, and any other stay or suspension of a board order must specify the nature of the damage.

History: En. Sec. 24, Ch. 676, L. 1979.

Compiler's Comments

Codification. Sec. 27, Ch. 676, L. 1979, provided: "It is the intent of the legislature that sections 24 and 25 become an integral part of Title 75, chapter 20, MCA, and that the provisions of that chapter apply to sections 24 and 25." Sections 24 and 25 are codified as 75-20-410 and 75-20-411.

75-20-411. Surety bond — other security. If an order of the board is stayed or suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning for review answer for all damages caused by the delay in enforcing the order of the board; except that the cost of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon final resolution of an appeal, he does not forfeit bond nor is he responsible for damages caused by delay.

History: En. Sec. 25, Ch. 676, L. 1979.

Compiler's Comments

Codification. Sec. 27, Ch. 676, L. 1979, provided: "It is the intent of the legislature that sections 24 and 25 become an integral part of Title 75, chapter 20, MCA, and that the provisions of that chapter apply to sections 24 and 25." Sections 24 and 25 are codified as 75-20-410 and 75-20-411.

Part 5

Long-Range Plans

75-20-501. Annual long-range plan submitted — contents — available to public. (1) Each utility and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan shall be submitted by April 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

(b) in the case of utility facilities, a description of efforts by the utility or person to coordinate the plan with other utilities or persons so as to provide a coordinated regional plan for meeting the energy needs of the region;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan shall be furnished to the governing body of each county in which any facility included in the plan under (2)(a) of this section is proposed to be located and made available to the public by the department. The utility or person shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental sciences, the department of highways, the department of public service regulation, the department of state lands, the department of fish, wildlife, and parks, and the department of community affairs. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment therefor to the department.

(4) A rural electric cooperative may furnish the department with a copy of the long-range plan and 2-year work plan required to be completed under federal rural electrification requirements in lieu of the long-range plan required in subsection (1).

(5) No person may file an application for a facility unless the facility had been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department.

History: En. Sec. 14, Ch. 327, L. 1973; amd. Sec. 40, Ch. 213, L. 1975; amd. Sec. 14, Ch. 494, L. 1975; R.C.M. 1947, 70-814; amd. Sec. 17, Ch. 68, L. 1979; amd. Sec. 3, Ch. 553, L. 1979; amd. Sec. 22, Ch. 676, L. 1979.

75-20-502. Study of included facilities. If a utility or person lists and identifies a proposed facility in its plan, submitted pursuant to 75-20-501, as one on which construction is proposed to be commenced within the 5-year period following submission of the plan, the department shall commence examination and evaluation of the proposed site to determine whether construction of the proposed facility would unduly impair the environmental values in 75-20-503. This study may be continued until such time as a person files an application for a certificate under 75-20-211. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate.

History: **En. Sec. 15, Ch. 327, L. 1973; amd. Sec. 15, Ch. 494, L. 1975; R.C.M. 1947, 70-815.**

75-20-503. Environmental factors evaluated. In evaluating long-range plans, conducting 5-year site reviews, and evaluating applications for certificates, the board and department shall give consideration to the following list of environmental factors, where applicable, and may by rule add to the categories of this section:

(1) energy needs:

(a) growth in demand and projections of need;

(b) availability and desirability of alternative sources of energy;

(c) availability and desirability of alternative sources of energy in lieu of the proposed facility;

(d) promotional activities of the utility which may have given rise to the need for this facility;

(e) socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;

(f) conservation activities which could reduce the need for more energy;

(g) research activities of the utility of new technology available to it which might minimize environmental impact;

(2) land use impacts:

(a) area of land required and ultimate use;

(b) consistency with areawide state and regional land use plans;

(c) consistency with existing and projected nearby land use;

(d) alternative uses of the site;

(e) impact on population already in the area, population attracted by construction or operation of the facility itself;

(f) impact of availability of energy from this facility on growth patterns and population dispersal;

(g) geologic suitability of the site or route;

(h) seismologic characteristics;

(i) construction practices;

(j) extent of erosion, scouring, wasting of land, both at site and as a result of fossil fuel demands of the facility;

(k) corridor design and construction precautions for transmission lines or aqueducts;

(l) scenic impacts;

(m) effects on natural systems, wildlife, plant life;

(n) impacts on important historic architectural, archeological, and cultural areas and features;

(o) extent of recreation opportunities and related compatible uses;

(p) public recreation plan for the project;

(q) public facilities and accommodation;

(r) opportunities for joint use with energy-intensive industries or other activities to utilize the waste heat from facilities;

(s) opportunities for using public lands for location of facilities whenever as economically practicable as the use of private lands and compatible with the requirements of this section;

(3) water resources impacts:

(a) hydrologic studies of adequacy of water supply and impact of facility on streamflow, lakes, and reservoirs;

(b) hydrologic studies of impact of facilities on groundwater;

(c) cooling system evaluation, including consideration of alternatives;

(d) inventory of effluents, including physical, chemical, biological, and radiological characteristics;

(e) hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments;

(f) relationship to water quality standards;

(g) effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses;

(h) relationship to projected uses;

(i) relationship to water rights;

(j) effects on plant and animal life, including algae, macroinvertebrates, and fish population;

(k) effects on unique or otherwise significant ecosystems, e.g., wetlands;

(l) monitoring programs;

(4) air quality impacts:

(a) meteorology—wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion;

(b) topography—factors affecting dispersion;

(c) standards in effect and projected for emissions;

(d) design capability to meet standards;

(e) emissions and controls:

(i) stack design;

(ii) particulates;

(iii) sulfur oxides;

(iv) oxides of nitrogen; and

(v) heavy metals, trace elements, radioactive materials, and other toxic substances;

(f) relationship to present and projected air quality of the area;

(g) monitoring program;

(5) solid wastes impacts:

(a) solid waste inventory;

(b) disposal program;

(c) relationship of disposal practices to environmental quality criteria;

(d) capacity of disposal sites to accept projected waste loadings;

(6) radiation impacts:

(a) land use controls over development and population;

(b) wastes and associated disposal program for solid, liquid, radioactive, and gaseous wastes;

(c) analyses and studies of the adequacy of engineering safeguards and operating procedures;

(d) monitoring—adequacy of devices and sampling techniques;

(7) noise impacts:

(a) construction period levels;

(b) operational levels;

(c) relationship of present and projected noise levels to existing and potential stricter noise standards;

(d) monitoring—adequacy of devices and methods.

History: En. Sec. 16, Ch. 327, L. 1973; amd. Sec. 16, Ch. 494, L. 1975; R.C.M. 1947, 70-816; amd. Sec. 2, Ch. 69, L. 1979; amd. Sec. 23, Ch. 676, L. 1979.

Parts 6 through 9 reserved

Part 10

Geothermal Exploration

75-20-1001. Geothermal exploration — notification of department. The board shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation related to the possible future development of a facility employing geothermal resources to comply with the following requirements:

(1) notify the department of the proposed action;

(2) submit to the department a description of the area involved;

(3) submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;

(4) submit to the department geological data reports at such times as may be required by the rules; and

(5) submit such other information as the board may require in the rules.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(3).

Part 11

Energy Conversion Facility

75-20-1101 through 75-20-1105. Repealed. Sec. 28, Ch. 676, L. 1979.

Part 12

Nuclear Energy Conversion

75-20-1201. Purpose — findings as to nuclear safety — reservation of nuclear facility approval powers to the people. (1) The people of Montana find that substantial public concern exists regarding nuclear reactors and other major nuclear facilities, including the following unresolved issues:

(a) the generation of waste from nuclear facilities, which remains a severe radiological hazard for many thousands of years and to which no means of containment assuring the protection of future generations exists;

(b) the spending of scarce capital to pay the rapidly increasing costs of nuclear facilities, preventing the use of that capital to finance renewable energy sources which hold more promise for supplying useful energy, providing jobs, and holding down energy costs;

(c) the liability of nuclear facilities to sudden catastrophic accidents which can affect large areas of the state, thousands of people, and countless future generations;

(d) the refusal of utilities, industry, and government to assume normal financial responsibility for compensating victims of such nuclear accidents;

(e) the impact of nuclear facilities on the proliferation of nuclear bombs and terrorism;

(f) the increasing pattern of abandonment of used nuclear facilities by their owners, resulting in radiological dangers to present and future societies as well as higher public costs for perpetual management; and

(g) the detrimental effect of the large uranium import program necessary to the expansion of nuclear power on American energy independence, defense policy, and economic well being.

(2) Therefore, the people of Montana reserve to themselves the exclusive right to determine whether major nuclear facilities are built and operated in this state.

History: **En. Sec. 1, I.M. 80, app. Nov. 7, 1978.**

Compiler's Comments

Severability. Section 7 of Initiative 80 was a severability clause.

Effective date. Initiative 80 was approved at the general election held November 7, 1978, and was effective July 1, 1979.

75-20-1202. Definitions. As used in this part and 75-20-201 through 75-20-203, the following definitions apply:

(1) (a) "Nuclear facility" means each plant, unit, or other facility designed for, or capable of,

(i) generating 50 megawatts of electricity or more by means of nuclear fission,

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels, or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility;

(b) "nuclear facility" does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy.

(2) "Facility," as defined in 75-20-104(7) is further defined to include any nuclear facility as defined in subsection (1)(a) of this section.

History: **En. Sec. 2, I.M. 80, app. Nov. 7, 1978.**

75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear facility. (1) The board may not issue a certificate to construct a nuclear facility unless it finds that:

(a) no legal limits exist regarding the rights of a person or group of persons to bring suit for and recover full and just compensation from the designers, manufacturers, distributors, owners, and/or operators of a nuclear facility for damages resulting from the existence or operation of the facility; and further, that no legal limits exist regarding the total compensation which may be required from the designers, manufacturers, distributors, owners, and/or operators of a nuclear facility for damages resulting from the existence or operation of such facility;

(b) the effectiveness of all safety systems, including but not limited to the emergency core cooling systems, of such nuclear facility has been demonstrated, to the satisfaction of the board, by the comprehensive laboratory testing of substantially similar physical systems in actual operation;

(c) the radioactive materials from such nuclear facilities can be contained with no reasonable chance, as determined by the board, of intentional or unintentional escape or diversion of such materials into the natural environment in such manner as to cause substantial or long-term harm or hazard to present or future generations due to imperfect storage technologies, earthquakes or other acts of God, theft, sabotage, acts of war or other social instabilities, or whatever other causes the board may deem to be reasonably possible, at any time during which such materials remain a radiological hazard; and

(d) the owner of such nuclear facility has posted with the board a bond totalling not less than 30% of the total capital cost of the facility, as estimated by the board, to pay for the decommissioning of the facility and the decontamination of any area contaminated with radioactive materials due to the existence or operation of the facility in the event the owner fails to pay the full costs of such decommissioning and decontamination. Excess bond, if any, shall be refunded to the owner upon demonstration, to the satisfaction of the board, that the site and environs of the facility pose no radiological danger to present or future generations and that whatever other conditions the board may deem reasonable have been met.

(2) Nothing in this section shall be construed as relieving the owner of a nuclear facility from full financial responsibility for the decommissioning of such facility and decontamination of any area contaminated with radioactive materials as a result of the existence or operation of such facility at any time during which such materials remain a radiological hazard.

History: En. Sec. 4, I.M. 80, app. Nov. 7, 1978.

75-20-1204. Annual review of evacuation and emergency medical aid plans. (1) The governor shall annually publish, publicize, and release to the news media and to the appropriate officials of affected communities, in a manner designed to inform residents of the affected communities, the entire evacuation plan specified in the licensing of each certified nuclear facility within this state. Copies of such plan shall be made available to the public upon request at no more than the cost of reproduction.

(2) The governor shall establish procedures for annual review by state and local officials of established evacuation and emergency medical aid plans with regard for, but not limited to, such factors as the adequacy of such plans, changes in traffic patterns, population densities, the locations of schools, hospitals, and industrial developments, and other factors as requested by locally elected representatives.

History: En. Sec. 5, I.M. 80, app. Nov. 7, 1978.

75-20-1205. Emergency approval authority invalid for nuclear facilities. Notwithstanding the provisions of subsections (2) and (3) of

75-20-304, the board may not waive compliance with any of the provisions of this part or 75-20-201 through 75-20-203 relating to certification of a nuclear facility.

History: **En. Sec. 6, I.M. 80, app. Nov. 7, 1978.**

TITLE 76

LAND RESOURCES AND USE

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2. Planning and Zoning.
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4. State Regulation of Subdivisions.
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6. Open Spaces.
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11. Natural Resources in General.
12. Wild and Scenic Resources.
13. Timber Resources.
14. Rangeland Resources.
15. Conservation Districts.
16. Grazing Districts.

CHAPTER 1

PLANNING BOARDS

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Part 1

General Provisions

76-1-101. Planning boards authorized. The governing body of any city or town, the governing bodies of more than one city or town, or the governing body of any county or any combination thereof may create a planning board in order to promote the orderly development of its governmental units and its environs.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

76-1-102. Purpose. (1) It is the object of this chapter to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned; that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

(2) In accomplishing this objective, it is the intent of this chapter that the planning board shall serve in an advisory capacity to presently established boards and officials.

History: **En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).**

76-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of a city or incorporated town.

(3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.

(4) "Master plan" means a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and of other related matters.

(5) "Mayor" means mayor of a city.

(6) "Person" means any individual, firm, or corporation.

(7) "Planning board" means a city planning board, a county planning board or a joint city-county planning board.

(8) "Plat" means a subdivision of land into lots, streets, and areas, marked upon the earth and represented on paper, and includes replats or amended plats.

(9) "Public place" means any tract owned by the state or its subdivisions.

(10) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

(11) "Units of government" means any federal, state, or regional unit of government or any county, city, or town.

(12) "Utility" means any facility used in rendering service which the public has a right to demand.

History: **En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; R.C.M. 1947, 11-3803(part); amd. Sec. 1, Ch. 266, L. 1979.**

76-1-104. Procedure to establish county planning board — protest. (1) Before a county planning board may be created, the board of county commissioners shall by resolution give public notice of their intent to create such planning board and of a public hearing thereon by publication of notice of time and place of hearing on such resolution in each newspaper published in the county not less than 15 or more than 30 days prior to the date of hearing.

(2) A resolution creating a county planning board shall not be adopted by the board of county commissioners if disapproved in writing, not later than 60 days after such hearing, by a majority of the qualified electors of the

county residing outside the limits of the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507 and outside the incorporated limits of each city and town in the county.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

76-1-105. Role of county in formation of city planning board. (1) Prior to enacting an ordinance creating a city planning board, the city council shall notify in writing the county commissioners of the county in which the city is located of their intention to form a city planning board.

(2) The board of county commissioners shall elect to form a city-county planning board or to permit the city to form a city planning board and shall notify in writing the city council of its election within 30 days from receipt of notice of the city's intention to form a planning board. In the event the county commissioners so elect, the planning board to be so formed shall be a city-county planning board.

History: En. Sec. 5, Ch. 246, L. 1957; R.C.M. 1947, 11-3805.

76-1-106. Role of the planning board. (1) To assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of community development, the planning board shall prepare a master plan and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

(2) The planning board may also propose policies for:

(a) subdivision plats;

(b) the development of public ways, public places, public structures, and public and private utilities;

(c) the issuance of improvement location permits on platted and unplatted lands;

(d) the laying out and development of public ways and services to platted and unplatted lands.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(1), (2).

76-1-107. Role of planning board in relation to subdivisions and plats. The governing body of any city, town, or county which has formed a planning board and adopted a comprehensive plan and subdivision regulations pursuant to this chapter and chapter 3 shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

History: En. Sec. 2, Ch. 19, L. 1971; R.C.M. 1947, 11-3842.1.

76-1-108. City-county planning board as a zoning commission. The city council may in its discretion require the city-county planning board to function as the zoning commission authorized under 76-2-307.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(3).

76-1-109. Interaction of local government and city-county planning board. The governing bodies of the city or county shall give consideration to recommendations of the city-county planning board, but the governing bodies shall not be bound by such recommendations.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(4).

76-1-110. Cooperation with planning board by state and local governments. Whenever the board undertakes the preparation of a master plan, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, such information, documents, and plans as have been prepared or, upon the request of the board, shall provide such information as relates to the board's activity.

History: **En. Sec. 29, Ch. 246, L. 1957; R.C.M. 1947, 11-3829.**

76-1-111. Representation of county or additional cities or towns on existing boards. (1) Any city, county, or town or any combination thereof wishing to be represented upon an existing planning board may, by agreement of the governing body or bodies then represented upon the board, obtain representation thereon and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

(2) The membership as well as the jurisdictional area of any board may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

(3) Any city, county, or town which becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of such representation. The governing bodies of any city or county so being represented may levy on all property which is added to the jurisdictional area of an existing board by such representation a tax for planning board purposes under procedures set forth in Title 7, chapter 6, part 23 or part 42, whichever is applicable; provided such tax shall not exceed the maximum levy authorized in 76-1-402 through 76-1-407.

History: **En. Sec. 15, Ch. 246, L. 1957; amd. Sec. 6, Ch. 273, L. 1971; R.C.M. 1947, 11-3815.**

76-1-112. Joint or consolidated planning boards. (1) Any existing city, county, or city-county planning board may form a joint or consolidated planning board with any other existing city, county, or city-county planning board or with any combination of these boards.

(2) The manner of combination shall be by interlocal agreement of the cities, counties, and towns represented on the existing planning boards pursuant to Title 7, chapter 11, part 1.

(3) The interlocal agreement shall:

(a) state the name of the combined board;

(b) specify whether a joint or combined board is formed;

(c) specify the representation, means and manner of appointment, membership duties, and manner of sharing costs of the combined board which may be on any basis agreeable to the governing bodies of the cities, counties, and towns represented on the existing planning boards.

(4) If a consolidated board is formed, the existing city, county, and city-county planning boards shall be dissolved and the consolidated board shall have all of the rights, duties, powers, and obligations of the existing planning boards.

(5) If a joint board is formed, the existing planning boards shall not be dissolved and the joint board shall have such rights, duties, powers, and obligations as are set forth in the interlocal agreement.

History: **En. 11-3815.1 by Sec. 1, Ch. 101, L. 1975; R.C.M. 1947, 11-3815.1.**

76-1-113. Effect of chapter on natural resources. Nothing in this chapter shall be deemed to authorize an ordinance, resolution, or rule which would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

History: En. Sec. 53, Ch. 246, L. 1957; amd. Sec. 6, Ch. 271, L. 1959; R.C.M. 1947, 11-3853.

Part 2

Membership

76-1-201. Membership of city-county planning board. A city-county planning board shall consist of not less than nine members to be appointed as follows:

(1) two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;

(2) two official members who reside within the city limits to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;

(3) two citizen members who reside within the city limits to be appointed by the mayor of the city;

(4) two citizen members who reside within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners;

(5) the ninth member to be selected by the eight officers and citizen members hereinabove provided for with the consent and approval of the board of county commissioners and the city council.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(part); amd. Sec. 1, Ch. 192, L. 1979.

76-1-202. Qualifications of citizen members of city-county planning board. (1) The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction; provided, however, that at least two of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction and the two members appointed by the county commissioners shall reside outside the city limits but within the jurisdictional area of the planning board.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)Ap. p. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; Ap. p. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; Sec. 11-3810, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3810(part), 11-3812(part), 11-3813.

76-1-203. Term of members of county and city-county planning boards. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be 2 years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for 1 or 2 years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(3).

76-1-204. Vacancies on county and city-county planning boards. (1) Vacancies occurring on the board of official members and by death or resignation of citizen members shall be filled for the unexpired term by the governing bodies having appointed them.

(2) Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners.

(3) Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor.

(4) In the event more than one city is represented on a board, the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

History: En. Sec. 11, Ch. 246, L. 1957; amd. Sec. 4, Ch. 273, L. 1971; R.C.M. 1947, 11-3811.

76-1-205 through 76-1-210 reserved.

76-1-211. Membership of county planning board. (1) County planning boards shall consist of not less than five members appointed by the board of county commissioners. At least one member of any county planning board existing on or formed after July 1, 1973, shall be a member of the governing board of a conservation district as provided for in chapter 15 or a state cooperative grazing district if officers of either reside in said county.

(2) In the event that any city or town subsequently becomes represented on the county planning board pursuant to 76-1-111, additional members of the planning board representing such cities or towns shall be appointed by the respective city councils.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(2).

76-1-212. Citizen members of county planning board. (1) The citizen members of the county planning board shall be resident freeholders in the area over which the planning board has jurisdiction.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3812(part), 11-3813.

76-1-213 through 76-1-220 reserved.

76-1-221. Membership of city planning board. (1) A city planning board shall consist of not less than seven members to be appointed as follows:

(a) one member to be appointed by the city council from its membership;

(b) one member to be appointed by the city council, who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

(c) one member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

(d) four citizen members to be appointed by the mayor, two of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this chapter and two of whom shall be resident freeholders within the city limits.

(2) The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

History: (1)En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959; Sec. 11-3804, R.C.M. 1947; (2)En. Sec. 7, Ch. 246, L. 1957; Sec. 11-3807, R.C.M. 1947; R.C.M. 1947, 11-3804(part), 11-3807.

76-1-222. City council member of city planning board. (1) As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member shall be coextensive with the term of office to which he has been elected or appointed unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless his term is terminated as hereinafter provided.

(2) The city council shall fill any vacancy occurring in its respective membership on the planning board.

History: En. Sec. 6, Ch. 246, L. 1957; R.C.M. 1947, 11-3806.

76-1-223. County representative for city planning board. As soon as a city council has enacted an ordinance creating a city planning board, the board of county commissioners of the county wherein the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment to the city planning board. This representative may be a member of the board of county commissioners or an officeholder or employee of the county. In the event of the failure of the county to so designate such member, the mayor may appoint a person of his own choosing and at his sole discretion as a representative of the county.

History: En. Sec. 14, Ch. 246, L. 1957; R.C.M. 1947, 11-3814; amd. Sec. 2, Ch. 266, L. 1979.

76-1-224. Citizen members of city planning board. (1) The citizen members shall:

(a) be qualified by knowledge and experience in matters pertaining to the development of the city; and

(b) hold no other office in the city government.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the city.

History: En. Secs. 8, 13, Ch. 246, L. 1957; amd. Secs. 3, 5, Ch. 247, L. 1963; R.C.M. 1947, 11-3808, 11-3813; amd. Sec. 3, Ch. 266, L. 1979.

Part 3

Organization and Administration

76-1-301. Planning board meetings. (1) The board shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July, and October.

(2) Special meetings of the planning board may be called by the president or by two members upon written request to the secretary. The secretary shall send to all members, at least 2 days in advance of a special meeting, a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting or if all members are present at the special meeting.

History: **En. Secs. 16, 17, Ch. 246, L. 1957; R.C.M. 1947, 11-3816, 11-3817.**

76-1-302. Planning board officers. At its first regular meeting in each year, the board shall elect from its members a president and vice-president. The vice-president shall have authority to act as president of the board during the absence or disability of the president.

History: **En. Sec. 21, Ch. 246, L. 1957; R.C.M. 1947, 11-3821.**

76-1-303. Offices. The city or county shall provide suitable offices for the holding of meetings and the preservation of plans, maps, documents, and accounts.

History: **En. Sec. 23, Ch. 246, L. 1957; R.C.M. 1947, 11-3823.**

76-1-304. Quorum — official action. (1) A majority of members shall constitute a quorum.

(2) No action of the planning board is official, however, unless authorized by a majority of members of the board at a regular or properly called special meeting.

History: **En. Sec. 18, Ch. 246, L. 1957; amd. Sec. 6, Ch. 247, L. 1963; R.C.M. 1947, 11-3818.**

76-1-305. Administration of board. To effectuate the purpose of this chapter, the board shall have the power and duty to:

(1) exercise general supervision of and make regulations for the administration of the affairs of the board;

(2) prescribe uniform rules pertaining to investigations and hearings;

(3) keep an accurate and complete record of all departmental proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of the board;

(4) make recommendations and an annual report to any governing bodies represented on the board concerning the operation of the board and the status of planning within its jurisdiction;

(5) prepare, publish, and distribute reports, proposed ordinances and proposed resolutions, and other material relating to the activities authorized under this chapter.

History: **En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; R.C.M. 1947, 11-3824(part).**

76-1-306. Board secretary and employees — service contracts. (1) The board may appoint and prescribe the duties and fix the compensation of a secretary and such employees as are necessary for the discharge of the duties and responsibilities of the board.

(2) To effectuate the purpose of this chapter, the board shall have the power and duty to prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the board and delegate to employees authority to perform ministerial acts in all cases except where final action of the board is necessary.

(3) The board may make contracts for special or temporary services and any professional services.

History: (1), (3)En. Sec. 22, Ch. 246, L. 1957; Sec. 11-3822, R.C.M. 1947; (2)En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; R.C.M. 1947, 11-3822, 11-3824(part).

76-1-307. Compensation and expenses of board members and employees. (1) The members of planning boards shall receive no salary for serving on the planning board but may be reimbursed from local funds for transportation and actual expenses up to but not exceeding state transportation reimbursements and allowable expenses incurred in attending planning board meetings.

(2) When the planning board determines that it is necessary for members or employees to attend a regional or national conference or interview in another city, county, or state dealing with planning or related problems, the planning board may pay the actual expenses of the attending members or employees provided the amount has been made available in the board's appropriation.

History: (1)En. Sec. 19, Ch. 246, L. 1957; amd. Sec. 1, Ch. 291, L. 1974; Sec. 11-3819, R.C.M. 1947; (2)En. Sec. 20, Ch. 246, L. 1957; amd. Sec. 7, Ch. 247, L. 1963; Sec. 11-3820, R.C.M. 1947; R.C.M. 1947, 11-3819, 11-3820.

Part 4

Financial Administration

76-1-401. Fiscal administration. (1) To effectuate the purpose of this chapter, the board shall have the power and duty to:

(a) supervise the fiscal affairs and responsibilities of the board;

(b) prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county governments and shall be limited in all expenditures to the provisions made therefor by the governing bodies represented upon the board.

(2) The planning board shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this chapter.

History: (1)En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; (2)En. Sec. 26, Ch. 246, L. 1957; Sec. 11-3826, R.C.M. 1947; R.C.M. 1947, 11-3824(part), 11-3826.

76-1-402. Funding of board operation. (1) After a city council has by ordinance, a board of county commissioners has by ordinance and resolution, or a city council and board of county commissioners have by ordinance and resolution created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

(2) When a planning board has been created by agreement of more than one governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and may budget and appropriate the funds necessary for the respective shares thus agreed upon.

History: **En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(1), (2).**

76-1-403. Tax levy by county for certain county planning districts authorized. When a county planning board has been established, the board of county commissioners may create a planning district which shall include that property which lies outside the limits of the jurisdictional area as established pursuant to 76-1-504 through 76-1-507 or as modified pursuant to 76-1-501 through 76-1-503 in counties where a city-county planning board has been established as well as that property which lies outside the limits of any incorporated cities and towns. The board of county commissioners may levy on all property located within such planning district a tax not to exceed the maximum levy authorized by 76-1-405 for planning board purposes, under procedures set forth in Title 7, chapter 6, part 23.

History: **En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(5); amd. Sec. 4, Ch. 266, L. 1979.**

76-1-404. Tax levy by county for city-county planning board authorized. When a city-county planning board has been established, the board of county commissioners may create a planning district which shall include that property within the jurisdictional areas as established pursuant to 76-1-504 through 76-1-507 which lies outside the limits of any incorporated cities and towns. The board of county commissioners may levy on all property located within such planning district a tax for planning board purposes, under procedures set forth in Title 7, chapter 6, part 23, provided such tax shall not exceed the maximum levy authorized in 76-1-405.

History: **En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(4).**

76-1-405. Maximum county mill levy — authorization for levy. The tax levy for planning board purposes shall be limited as follows:

(1) A county of the first class, as defined in 7-1-2111, may levy a tax not to exceed 2 mills.

(2) A county of the second class may levy a tax not to exceed 3 mills.

(3) A county of the third class may levy a tax not to exceed 4 mills.

(4) A county of the fourth class may levy a tax not to exceed 5 mills.

(5) Counties of the fifth, sixth, and seventh classes may levy a tax not to exceed 6 mills.

History: **En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(part).**

76-1-406. Tax levy by municipalities authorized. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town for planning board purposes, under procedures set forth in Title 7, chapter 6, part 42, provided such tax shall not exceed the maximum levy authorized in 76-1-407.

History: **En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(3); amd. Sec. 5, Ch. 266, L. 1979.**

76-1-407. Maximum city mill levy. The tax levy for planning board purposes shall be limited as follows:

(1) A city of the first class, as defined in 7-1-4111, may levy a tax not to exceed 2 mills.

(2) A city of the second class may levy a tax not to exceed 4 mills.

(3) A city of the third class may levy a tax not to exceed 6 mills.

(4) A town may levy a tax not to exceed 6 mills.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(part).

76-1-408. Acceptance and administration of gifts and donations. (1) A city, county, or city-county planning board organized pursuant to the provisions of this chapter is hereby empowered and given the right to:

(a) accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest or any property (real, personal, or mixed) or any improved or unimproved park or playground; and

(b) utilize, hold, or dispose of the same for planning purposes not inconsistent with the provisions of this chapter.

(2) Any money so accepted shall be deposited with the city or county in a special nonreverting planning board fund to be available for expenditures by the planning board for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning board.

History: En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965; R.C.M. 1947, 11-3827(part).

76-1-409. Acceptance and administration of government funds and services. Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities, from state or local governments or their agencies and instrumentalities, or from civic sources; may contract with respect thereto; and may provide such information and reports as may be necessary to secure such financial aid.

History: En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965; R.C.M. 1947, 11-3827(part); amd. Sec. 6, Ch. 266, L. 1979.

Part 5

Jurisdictional Area

76-1-501. Jurisdictional area of county planning board. The board of county commissioners shall by resolution establish the jurisdictional area of the county planning board. The jurisdictional area shall include the area which is both outside the incorporated limits of any city in the county as well as outside the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507. Should any city or town become represented on the county planning board pursuant to 76-1-111, the jurisdictional area of the county planning board shall be extended to include that city or town.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(1).

76-1-502. Filing of map of jurisdictional area of county planning board — revision of boundaries. The planning board, after the approval of the jurisdictional area by the board of county commissioners, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolution of the board of county commissioners. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(2).

76-1-503. Resolution of conflicts involving jurisdictional area of county planning boards. (1) In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. Any map showing the boundary line so agreed upon and approved shall be filed as provided in 76-1-502 and thereafter shall fix the limit of territorial jurisdiction with respect to planning boards.

(2) In case the jurisdictional area of a city-county planning board, which is established subsequent to the establishment of a county planning board, is potentially within the jurisdiction of the county planning board, then the property outside any incorporated city between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of the respective governing bodies, and a map showing the boundary lines so agreed upon shall be filed as provided in 76-1-502 and thereafter shall fix the limits of the territorial jurisdiction of the respective planning boards.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(3), (4).

76-1-504. Jurisdictional area of city-county planning board. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(part).

76-1-505. Extension of boundaries of city-county planning board jurisdictional area. (1) The boundaries of the jurisdictional area can be extended further than 4 ½ miles from the limits of the cities only upon petition signed by 5% or more of the resident freeholders living in excess of 4 ½ miles and not more than 12 miles from the limits of the cities and within the area desiring to be included within said jurisdictional limits and upon presentation of said petition to the board of county commissioners.

(2) Thereafter, the board of county commissioners must by resolution set the proposed boundaries of said area and give notice of their intent to add said area to the jurisdictional limits theretofore created and of receipt of said

petition by publication of notice of time and place of hearing on said petition and resolution. Said notice is to be published in a newspaper published in the county not less than 10 or more than 20 days prior to the date of said hearing. Thereafter, the boundaries of said area can only be set upon good cause being shown for the establishment of said extended jurisdictional area and the boundaries thereof, provided that such resolution shall not be adopted by the board of county commissioners if disapproved in writing by a majority of the freeholders of the territory proposed to be embraced. The jurisdictional area shall not extend more than 12 miles beyond the limits of any city within the jurisdictional area.

History: **En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(part).**

76-1-506. Filing of map of jurisdictional area of city-county planning board — revision of boundaries. The planning board, after approval of the jurisdictional area by the governing bodies, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolutions of the governing bodies. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

History: **En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(2).**

76-1-507. Resolution of conflicts over jurisdictional areas of several city-county planning boards. In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. A map showing the boundary lines so agreed upon and approved shall be filed as provided in 76-1-506 and thereafter shall fix the limit of territorial jurisdiction of the respective planning boards.

History: **En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(3).**

76-1-508. Planning projects outside city-county planning board jurisdictional area — broad construction. (1) Any city-county planning board organized pursuant to the provisions of this chapter is hereby empowered, if requested by the board of county commissioners, to conduct specific planning projects within the county and outside of the jurisdictional area of said city-county planning board as defined in 76-1-504 through 76-1-507.

(2) Such authority to conduct specific planning projects outside of the jurisdictional area of the city-county planning board upon request of the board of county commissioners shall be broadly construed so as to enable the county to qualify under the provisions of and regulations governing any planning assistance program administered by any agency of the United States of America or the state of Montana.

History: **En. Sec. 1, Ch. 190, L. 1965; R.C.M. 1947, 11-3830.1.**

Part 6

Master Plan

76-1-601. Master plan — contents. The planning board shall prepare and propose a master plan for the jurisdictional area. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body. The plan may include:

(1) careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county;

(2) maps, plats, charts, and descriptive material presenting basic information, locations, extent, and character of any of the following:

(a) history, population, and physical site conditions;

(b) land use, including the height, area, bulk, location, and use of private and public structures and premises;

(c) population densities;

(d) community centers and neighborhood units;

(e) blighted and slum areas;

(f) streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;

(g) sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;

(h) flood control and prevention;

(i) public and private utilities, including water, light, heat, communication, and other services;

(j) transportation, including rail, bus, truck, air, and water transport and their terminal facilities;

(k) local mass transit, including motor and trolley bus; street, elevated, or underground railways; and taxicabs;

(l) parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges, and other public grounds, spaces, and facilities of a recreational nature;

(m) public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;

(n) education, including location and extent of schools, colleges, and universities;

(o) land utilization, including areas for manufacturing and industrial uses, concentration of wholesale business, retail business, and other commercial uses, residential uses, and areas for mixed uses;

(p) conservation of water, soil, agricultural, and mineral resources;

(q) any other factors which are a part of the physical, economic, or social situation within the city or county;

(3) reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in subsection (2) so as to substantially accomplish the object of this chapter as set out in 76-1-101 and 76-1-102;

(4) a long-range development program of public works' projects, based on the recommended plans of the planning board, for the purpose of eliminating

unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment and the keeping of such program up-to-date for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds;

(5) recommendations setting forth the development, improvement, and extension of areas, if any, to be set aside for use as trailer courts and sites for mobile homes.

History: Ap. p. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973; Sec. 11-3831, R.C.M. 1947; Ap. p. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; Sec. 11-3803, R.C.M. 1947; R.C.M. 1947, 11-3803(part), 11-3831.

76-1-602. Public hearing on proposed master plan. (1) Prior to the submission of the proposed master plan to the governing bodies, the board shall give notice and hold a public hearing on the plan.

(2) At least 10 days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

History: En. Sec. 33, Ch. 246, L. 1957; amd. Sec. 13, Ch. 247, L. 1963; R.C.M. 1947, 11-3833.

76-1-603. Adoption of master plan by planning board. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution recommend the proposed master plan and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the board.

History: En. Sec. 34, Ch. 246, L. 1957; amd. Sec. 14, Ch. 247, L. 1963; R.C.M. 1947, 11-3834.

76-1-604. Adoption, revision, or rejection of master plan by local governments. The governing bodies shall adopt, revise, or reject such proposed plan or any of its parts.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part).

76-1-605. Use of adopted master plan. After adoption of the master plan, the city council, the board of county commissioners, or other governing body within the territorial jurisdiction of the board shall be guided by and give consideration to the general policy and pattern of development set out in the master plan in the:

(1) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(2) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;

(3) adoption of subdivision controls;

(4) adoption of zoning ordinances or resolutions.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part).

76-1-606. Effect of master plan on subdivisions and plats. (1) Where a master plan has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.

(2) Thereafter:

(a) a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board, which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

(b) a plat involving lands outside the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the master plan. The board of county commissioners shall have the final authority to approve the filing of such plat.

(3) Nothing herein contained shall be interpreted to limit the present powers of the city or county governments but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.

History: En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963; amd. Sec. 9, Ch. 273, L. 1971; R.C.M. 1947, 11-3842.

CHAPTER 2

PLANNING AND ZONING

Part 1 — County Planning and Zoning Commission

Section

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Part 1

County Planning and Zoning Commission

76-2-101. Planning and zoning commission and district. (1) Whenever the public interest or convenience may require and upon petition of 60% of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create a planning and zoning district and to appoint a commission consisting of five members.

(2) No such planning or zoning district may be created in an area which has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" shall mean any area that consists of not less than 40 acres.

History: (1), (2)En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; Sec. 16-4101, R.C.M. 1947; (3)En. Sec. 7, Ch. 154, L. 1953; amd. Sec. 1, Ch. 229, L. 1955; Sec. 16-4107, R.C.M. 1947; R.C.M. 1947, 16-4101(part), 16-4107.

76-2-102. Organization and operation of commission. (1) The commission is to consist of the three county commissioners, the county surveyor, and the county assessor. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses and shall be residents of the county in which they serve.

(2) The commission hereby is authorized to appoint necessary employees and fix their compensation with the approval of the board of county commissioners, to select a chairman to serve for 1 year, to appoint a secretary who shall keep permanent and complete records of its proceedings, and to adopt rules governing the transaction of its business.

(3) The finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the members of the board shall be paid from a levy of not to exceed 1 mill on the taxable valuation of the real property within such district.

History: En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; R.C.M. 1947, 16-4101(part).

76-2-103. Powers of commission and employees. (1) In general, the planning and zoning commission shall have such powers as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes of this part.

(2) The planning and zoning commission and any of its members, officers, and employees in the performance of their functions may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon.

History: En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).

76-2-104. Development pattern. (1) For the purpose of furthering the health, safety, and general welfare of the people of the county, the county planning and zoning commission hereby is empowered and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district.

(2) Such development pattern, with the accompanying maps, plats, charts, and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings or within which the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

76-2-105. Continuation of prior nonconforming uses. Existing nonconforming uses may be continued although not in conformity with such zoning regulations.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

76-2-106. Adoption of development district. (1) Adoption by the planning and zoning commission of the development district or any change therein may be in whole or in part but must be by the affirmative vote of the majority of the whole commission, provided, however, that prior to any such adoption, a public hearing shall have been held not less than 15 days after notice thereof shall have been posted in at least three public places within the area affected.

(2) The resolution adopting the district or any part or parts covering one or more of the functional elements which may be included within the district shall refer expressly to the maps, charts, and descriptive matters forming the pattern or part thereof. The board of county commissioners shall have the power to authorize such variance from the recommendations of the planning commission as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the decision of the planning and zoning commission will result in unnecessary hardship.

History: En. Sec. 3, Ch. 154, L. 1953; R.C.M. 1947, 16-4103.

76-2-107. Preparation of resolutions and other materials. The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part thereof previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity thereof and including procedure for appeals from decisions made under the authority of such regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is hereby authorized to adopt such resolutions.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

76-2-108. Permits authorized. The planning and zoning commission hereby is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, alteration, or enlargement of any building or structure otherwise subject to the provisions of this part and may establish and collect reasonable fees therefor. The fees so collected are to go to the general fund of the county.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

76-2-109. Effect on natural resources. No planning district or recommendations adopted under this part shall regulate lands used for grazing, horticulture, agriculture, or the growing of timber.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

76-2-110. Appeal procedure. Any person aggrieved by any decision of the commission or the board of county commissioners may, within 30 days after such decision or order, appeal to the district court in the county in which the property involved is located.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

76-2-111. Cooperation by public agencies with commission. All public officials, departments, and agencies having information, maps, and data deemed by the commission pertinent to county planning are hereby empowered and directed to make such information available for the use of the county planning and zoning commission.

History: En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).

76-2-112. Effect on powers of incorporated communities to plan adjacent areas. The authority heretofore granted by law to the incorporated communities to approve subdivision plats within the unincorporated area adjacent to their corporate limits is not abrogated by this part except and until the board of county commissioners having jurisdiction over such adjacent area establishes a planning commission and adopts initial regulations for subdivision control within adjacent areas or districts. Authority of the adjacent municipality shall be suspended on the effective date of the county regulation with respect to all areas governed by county subdivision regulations.

History: **En. Sec. 6, Ch. 154, L. 1953; R.C.M. 1947, 16-4106.**

Part 2

County Zoning

76-2-201. County zoning authorized. For the purpose of promoting the health, safety, morals, and general welfare of the people in cities and towns and counties whose governing bodies have adopted a comprehensive development plan for jurisdictional areas pursuant to chapter 1, the boards of county commissioners in such counties are authorized to adopt zoning regulations for all or parts of such jurisdictional areas in accordance with the provisions of this part.

History: **En. Sec. 1, Ch. 246, L. 1963; R.C.M. 1947, 16-4701.**

76-2-202. Establishment of zoning districts — regulations. (1) Within the unincorporated portions of a jurisdictional area which has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area.

(2) Within some such zoning districts it shall be lawful and within others it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

(3) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

(4) All such regulations shall be uniform for each class or kind of buildings throughout a district, but the regulations in one district may differ from those in other districts.

History: **En. Sec. 3, Ch. 246, L. 1963; amd. Sec. 18, Ch. 273, L. 1971; R.C.M. 1947, 16-4703.**

76-2-203. Criteria and guidelines for zoning regulations. The zoning regulations shall be made in accordance with a comprehensive development plan and shall be designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such zoning regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such jurisdictional area. The zoning regulations shall, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

History: **En. Sec. 4, Ch. 246, L. 1963; R.C.M. 1947, 16-4704.**

76-2-204. Role of planning boards. (1) The board of county commissioners shall require the county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only.

(2) This section shall apply to either the county planning board or the city-county planning board where only one of these planning boards has been established.

History: **En. Sec. 2, Ch. 246, L. 1963; amd. Sec. 17, Ch. 273, L. 1971; R.C.M. 1947, 16-4702.**

76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district shall be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice shall state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) the time and place of the public hearing;

(d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make such revisions or amendments as it may deem proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice shall state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district and/or establishing the zoning regulations for the district; but if 40% of the freeholders within such district whose names appear on the last completed assessment roll shall have protested the establishment of the district or adoption of the regulations, the board of county commissioners shall not adopt the resolution and no further zoning resolution shall be proposed for the district for a period of 1 year.

History: **En. Sec. 5, Ch. 246, L. 1963; amd. Sec. 19, Ch. 273, L. 1971; R.C.M. 1947, 16-4705.**

76-2-206. Interim zoning map or regulation. (1) If a county is conducting or in good faith intends to conduct studies within a reasonable time or has held or is holding a hearing for the purpose of considering a master plan or zoning regulations or an amendment, extension, or addition to either pursuant to this part, the board of county commissioners in order to promote the public health, safety, morals, and general welfare may adopt as an emergency measure a temporary interim zoning map or temporary interim zoning regulation, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency.

(2) Such interim resolution shall be limited to 1 year from the date it becomes effective. The board of county commissioners may extend such interim resolution for 1 year, but not more than one such extension may be made.

History: **En. 16-4711 by Sec. 20, Ch. 273, L. 1971; R.C.M. 1947, 16-4711.**

76-2-207. Permits authorized. The board of county commissioners may provide for the issuance of location or conformance permits and may collect a fee for each such permit. The proceeds of such fees shall be deposited in the general fund of the county.

History: **En. Sec. 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4708(part).**

76-2-208. Continuation of nonconforming uses. Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued although such use does not conform to the provisions of such resolution.

History: **En. Sec. 9, Ch. 246, L. 1963; R.C.M. 1947, 16-4709.**

76-2-209. Effect on natural resources. No resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, shall prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

History: **En. Sec. 10, Ch. 246, L. 1963; R.C.M. 1947, 16-4710.**

76-2-210. Enforcement of zoning provisions. (1) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution made under authority conferred hereby, the proper authorities of the county, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

(2) The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions.

History: En. Secs. 7, 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part), 16-4708(part).

76-2-211. Violations and penalties. A violation of this part or any resolution adopted pursuant thereto is a misdemeanor and shall be punishable by a fine not exceeding $500 or imprisonment in the county jail not exceeding 6 months or both.

History: En. Sec. 7, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part); amd. Sec. 7, Ch. 266, L. 1979.

76-2-212 through 76-2-220 reserved.

76-2-221. Board of adjustment. (1) The board of county commissioners shall provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part shall provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this part.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this part. Meetings of the board of adjustment shall be held at the call of the chairman and at such times as the board may determine. Such chairman or in his absence the acting chairman may administer oaths and compel the attendance of witnesses.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part).

76-2-222. Membership and term of board members — vacancies. (1) The board of adjustment shall consist of five members, each to be appointed for a term of 2 years and removable for cause by the board of county commissioners upon written charges and after public hearing. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of 76-2-321 through 76-2-328.

(2) Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(1).

76-2-223. Powers of board of adjustment. (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any resolution adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution;

(c) to authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship and so that the spirit of the resolution shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, the board of adjustment may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(5), (6).

76-2-224. Vote needed for board action. The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution; or to effect any variation in such resolution.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(7).

76-2-225. Public access to board activities. (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part).

76-2-226. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the county affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

(2) The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time.

(5) Upon the hearing, any party may appear in person or by his attorney.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(3), (4).

76-2-227. Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the county may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may (upon application, on notice to the board, and on due cause shown) grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(3) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(8) thru (11).

76-2-228. Awarding of costs upon appeal from board decision. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(12).

Part 3

Municipal Zoning

76-2-301. Municipal zoning authorized. For the purpose of promoting health, safety, morals, or the general welfare of the community, the city or town council or other legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts, and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

History: En. Sec. 1, Ch. 136, L. 1929; re-en. Sec. 5305.1, R.C.M. 1935; R.C.M. 1947, 11-2701.

76-2-302. Zoning districts. (1) For any or all of the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this part. Within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

(2) All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

History: **En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(1).**

76-2-303. Procedure to administer zoning laws — hearing and notice. (1) The city or town council or other legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced and from time to time amended, supplemented, or changed.

(2) However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality.

History: **En. Sec. 4, Ch. 136, L. 1929; re-en. Sec. 5305.4, R.C.M. 1935; R.C.M. 1947, 11-2704.**

76-2-304. Purposes of zoning. (1) Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

History: **En. Sec. 3, Ch. 136, L. 1929; re-en. Sec. 5305.3, R.C.M. 1935; R.C.M. 1947, 11-2703.**

76-2-305. Alteration of zoning regulations — protest. (1) Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. The provisions of 76-2-303 relative to public hearings and official notice shall apply equally to all changes or amendments.

(2) In case, however, of a protest against such change signed by the owners of 20% or more either of the area of the lots included in such proposed change or of those immediately adjacent in the rear thereof extending 150 feet therefrom or of those adjacent on either side thereof within the same block or of those directly opposite thereof extending 150 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city or town council or legislative body of such municipality.

History: **En. Sec. 5, Ch. 136, L. 1929; re-en. Sec. 5305.5, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1969; R.C.M. 1947, 11-2705.**

76-2-306. Interim zoning ordinances. (1) The city or town council or other legislative body of such municipality, to protect the public safety, health, and welfare and without following the procedures otherwise required preliminary to the adoption of a zoning ordinance, may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated zoning proposal which the legislative body is considering or studying or intends to study within a reasonable time.

(2) Such interim ordinance shall only be applicable within the city limits and up to 1 mile beyond the corporate boundaries of the city or town and shall take effect upon passage; provided, however, a hearing is first held upon notice reasonably designed to inform all affected parties and in no event shall notice be less than publication in a newspaper of general circulation at least 7 days before the hearing.

(3) Such interim ordinance shall be of no further force and effect 6 months from the date of adoption thereof. However, after notice pursuant to 76-2-303 and pursuant to public hearing, the legislative body may extend such interim ordinance for 1 year. Any such extension shall require a two-thirds vote for passage and shall become effective upon passage. Not more than two such extensions may be adopted.

History: En. 11-2711 by Sec. 1, Ch. 488, L. 1975; R.C.M. 1947, 11-2711.

76-2-307. Zoning commission. In order to avail itself of the powers conferred by this part, except 76-2-306, the city or town council or other legislative body shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such city or town council or other legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

History: En. Sec. 6, Ch. 136, L. 1929; re-en. Sec. 5305.6, R.C.M. 1935; R.C.M. 1947, 11-2706.

76-2-308. Enforcement of zoning regulations and ordinances. (1) The city or town council or other legislative body may provide by ordinance for the enforcement of this part and of any regulation or ordinance made thereunder.

(2) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

History: En. Sec. 8, Ch. 136, L. 1929; re-en. Sec. 5305.8, R.C.M. 1935; R.C.M. 1947, 11-2708(part); amd. Sec. 8, Ch. 266, L. 1979.

76-2-309. Conflict with other laws. (1) Wherever the regulations made under authority of this part require a greater width or size of yards, courts, or other open spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part shall govern.

(2) Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces; require a lower height of building or a less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required by the regulations made under authority of this part, the provisions of such statute or local ordinance or regulation shall govern.

History: En. Sec. 9, Ch. 136, L. 1929; re-en. Sec. 5305.9, R.C.M. 1935; R.C.M. 1947, 11-2709.

76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal boundaries. (1) The local city or town council or other legislative body which has adopted a master plan pursuant to chapter 1 may extend the application of its zoning or subdivision regulations, or both, beyond its limits in any direction but not in a county which has adopted such regulations within the contemplated area.

(2) (a) A city of the first class as defined in 7-1-4111 may not extend the application of its zoning or subdivision regulations, or both, more than 3 miles beyond its limits, a city of the second class may not so extend more than 2 miles beyond its limits, and a city or town of the third class may not so extend more than 1 mile beyond its limits.

(b) Where two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by this section, 76-2-302, and 76-2-311, then the extension of zoning or subdivision regulations, or both, by these cities shall terminate at a boundary line agreed upon by the cities so concerned.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).

76-2-311. Administration of regulations in extended area. (1) Any city or town council or other legislative body may thereafter enforce such regulations in the area to the same extent, as if such property were situated within its corporate limits, until the county board adopts a master plan pursuant to chapter 1 and accompanying zoning or subdivision resolutions, or both, which include the area.

(2) As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or an existing city planning board must be increased to include two representatives from the unincorporated area which is to be affected. These representatives shall be appointed by the board of county commissioners. Such representation, however, shall cease when the county board adopts a master plan pursuant to chapter 1 and accompanying zoning or subdivision resolutions, or both, which include the area.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).

76-2-312. Exclusion for commission-manager plan municipalities. A city or town which has as its plan of government the commission-manager plan shall be excluded from the provisions of 76-2-310 and 76-2-311 which define extraterritorial authority to review proposed subdivisions.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).

76-2-313. Definition of community residential facility. "Community residential facility" means:

(1) a group, foster, or other home specifically provided as a place of residence for developmentally disabled or handicapped persons who do not require nursing care;

(2) a district youth guidance home established pursuant to 41-5-903;

(3) a halfway house operated in accordance with regulations of the department of health and environmental sciences for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home.

History: En. Sec. 1, Ch. 350, L. 1973; amd. Sec. 1, Ch. 129, L. 1974; amd. Sec. 6, Ch. 364, L. 1975; R.C.M. 1947, 11-2702.1.

76-2-314. Relationship of foster homes, boarding homes, and community residential facilities to zoning. (1) A foster or boarding home operated under the provision of 41-3-501 through 41-3-504 or community residential facility serving eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) The homes are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department or any other agency of the state or political subdivision thereof which is not applicable to residential occupancies in general may not be applied to a community residential facility serving eight or fewer persons.

(3) Nothing in this section shall be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of this section provided such home is licensed by the department of health and environmental sciences and the department of social and rehabilitation services.

History: En. Sec. 2, Ch. 350, L. 1973; amd. Sec. 2, Ch. 129, L. 1974; R.C.M. 1947, 11-2702.2.

76-2-315. Violations and penalties. (1) A violation of this part or of such ordinance or regulation made pursuant to 76-2-308(1) is a misdemeanor, and such city or town council or other legislative body may provide for the punishment thereof by fine or imprisonment or both.

(2) It is also empowered to provide civil penalties for such violation.

History: En. Sec. 8, Ch. 136, L. 1929; re-en. Sec. 5305.8, R.C.M. 1935; R.C.M. 1947, 11-2708(part); amd. Sec. 9, Ch. 266, L. 1979.

76-2-316 through 76-2-320 reserved.

76-2-321. Board of adjustment. (1) Such city or town council or other legislative body may provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part may provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules therein contained.

(2) An ordinance adopted pursuant to this section providing for a board of adjustment may restrict the authority of the board and provide that the city or town council or other legislative body reserves to itself the power to make certain exceptions to regulations, ordinances, or land use plans adopted pursuant to this part.

(3) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this part. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman or in his absence the acting chairman may administer oaths and compel the attendance of witnesses.

History: **En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(part).**

76-2-322. Membership and term of board members — vacancies. (1) The board of adjustment shall consist of five members, each to be appointed for a term of 3 years and removable for cause by the appointing authority upon written charges and after public hearing.

(2) Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

History: **En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(1).**

76-2-323. Powers of board of adjustment. (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any ordinance adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance;

(c) to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, such board may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

History: **En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(5), (6).**

76-2-324. Vote needed for board action. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance; or to effect any variation in such ordinance.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(7).

76-2-325. Public access to board activities. (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(part).

76-2-326. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

(2) The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time.

(5) Upon the hearing any party may appear in person or by attorney.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(3), (4).

76-2-327. Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which

shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may (on application, on notice to the board, and on due cause shown) grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(3) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(8) thru (11).

76-2-328. Awarding of costs upon appeal from board decision. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(12).

CHAPTER 3

LOCAL REGULATION OF SUBDIVISIONS

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Part 1

General Provisions

76-3-101. Short title. This chapter may be cited as the "Montana Subdivision and Platting Act".

History: En. Sec. 1, Ch. 500, L. 1973; R.C.M. 1947, 11-3859.

76-3-102. Statement of purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to require that whenever necessary, the appropriate approval of subdivisions be contingent upon a written finding of public interest by the governing body; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey.

History: En. Sec. 2, Ch. 500, L. 1973; amd. Sec. 1, Ch. 498, L. 1975; amd. Sec. 1, Ch. 552, L. 1977; R.C.M. 1947, 11-3860.

76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(3) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter.

(4) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

(5) "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.

(6) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

(7) "Occasional sale" means one sale of a division of land within any 12-month period.

(8) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(9) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(10) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

(11) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the

county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant thereto.

(12) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (Title 37, chapter 67) to practice surveying in the state of Montana.

(13) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (Title 37, chapter 67) to practice engineering in the state of Montana.

(14) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and shall include any resubdivision and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part).

76-3-104. What constitutes subdivision. A subdivision shall comprise only those parcels less than 20 acres which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part).

76-3-105. Violations. Any person who violates any provision of this chapter or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than $100 or more than $500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

History: En. Sec. 18, Ch. 500, L. 1973; amd. Sec. 2, Ch. 553, L. 1977; R.C.M. 1947, 11-3876.

Part 2

Miscellaneous Exemptions

76-3-201. Exemption for certain divisions of land. Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter shall not apply to any division of land which:

(1) is created by order of any court of record in this state or by operation of law or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (Title 70, chapter 30);

(2) is created to provide security for construction mortgages, liens, or trust indentures;

(3) creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

(4) creates cemetery lots;

(5) is created by the reservation of a life estate;

(6) is created by lease or rental for farming and agricultural purposes.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(9).

76-3-202. Exemption for structures on complying subdivided lands. Where required by this chapter, when the land upon which an improvement is situated has been subdivided in compliance with this chapter, the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this chapter.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 10, Ch. 266, L. 1979.

76-3-203. Exemption for certain condominiums. Condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part).

76-3-204. Exemption for conveyances of one or more parts of a structure or improvement. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(10).

76-3-205. Exemption for state-owned lands — exception. The provisions of this chapter shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(5).

76-3-206. Exemption for conveyances executed prior to July 1, 1974. This chapter shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(part).

76-3-207. Subdivisions exempted from review but subject to survey requirements — exceptions. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a gift or sale to any member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale;

(e) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, any division of lots which results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by the governing body, and an amended plat must be filed with the county clerk and recorder;

(b) any change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

History: **En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(6).**

76-3-208. Subdivisions exempted from surveying and filing requirements but subject to review provisions. Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this chapter but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

History: **En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(7).**

76-3-209. Exemption from surveying and platting requirements for lands acquired for state highways. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209 and are exempted from the surveying and platting requirements of this chapter. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

History: **En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(4).**

76-3-210. Subdivisions exempted from requirement of an environmental assessment. (1) Subdivisions totally within a master planning area adopted pursuant to chapter 1 wherein zoning regulations pursuant to part 3 of chapter 2 or 76-2-201 and a long-range development program of public works' projects pursuant to 76-1-601 have been adopted are deemed to be in the public interest and exempt from the requirement of an environmental assessment.

(2) (a) When a subdivision is proposed in an area for which a master plan has been adopted pursuant to chapter 1 and the proposed subdivision will be in compliance with the plan or when the subdivision will contain fewer than 10 parcels and less than 20 acres, a planning board established

pursuant to chapter 1 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment.

(b) When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review.

(c) Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this subsection.

History: (1)En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; Sec. 11-3862, R.C.M. 1947; (2)En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; Sec. 11-3863, R.C.M. 1947; R.C.M. 1947, 11-3862(8), 11-3863(3.1).

Part 3

Land Transfers

76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in 76-3-207(1).

(3) If transfers not in accordance with this chapter are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of such action shall be imposed against the party not prevailing.

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 633, L. 1979.

76-3-302. Restrictions on recording instruments relating to land subject to surveying requirements. The county clerk and recorder of any county shall not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(3).

76-3-303. Contract for deed permitted if buyer protected. Notwithstanding the provisions of 76-3-301, after the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(1) that under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be

a bank or savings and loan association chartered to do business in the state of Montana;

(2) that under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(3) that the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments he has made under the contract; and

(4) that the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner.".

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(4).

76-3-304. Effect of recording complying plat. The recording of any plat made in compliance with the provisions of this chapter shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(3).

76-3-305. Vacation of plats — utility easements. (1) Any plat prepared and recorded as herein provided may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502, subsections (1) and (2) of 7-14-2616, 7-14-2617, subsections (1) and (2) of 7-14-4114, and 7-14-4115, and upon such vacation the title to the streets and alleys of such vacated portions to the center thereof shall revert to the owners of the properties within the platted area adjacent to such vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title thereto, the owner of said public or private utility facility shall have an easement over the vacated land to continue the operation and maintenance of the public utility facility.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(1).

76-3-306. Covenants run with the land. All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

History: En. Sec. 11, Ch. 500, L. 1973; R.C.M. 1947, 11-3869.

76-3-307. Donations or grants to public considered a grant to donee. Every donation or grant to the public or to any person, society, or corporation marked or noted on a plat is to be considered a grant to the donee.

History: En. Sec. 13, Ch. 500, L. 1973; R.C.M. 1947, 11-3871.

Part 4

Survey Requirements

76-3-401. Survey requirements for lands other than subdivisions. All divisions of land for sale other than a subdivision after July 1, 1974, into parcels which cannot be described as one-thirty-second or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor.

History: **En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(1).**

76-3-402. Survey and platting requirements for subdivided lands. (1) Every subdivision of land after June 30, 1973, shall be surveyed and platted in conformance with this chapter by or under the supervision of a registered land surveyor.

(2) Subdivision plats shall be prepared and filed in accordance with this chapter and regulations adopted pursuant thereto.

(3) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners shall be filed in accordance with Corner Recordation Act of Montana (Title 70, chapter 22, part 1). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with this chapter and regulations adopted pursuant thereto.

History: **En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(2).**

76-3-403. Monumentation. (1) The department of community affairs shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(2) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

History: **En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(11), (12).**

76-3-404. Certificate of survey. (1) Within 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether he is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in such map;

(c) discloses evidence to suggest alternate locations of lines or points;

(d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of such map without trigonometric calculations.

(2) A certificate of survey will not be required for any survey which is made by the United States bureau of land management or which is preliminary or which will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(3) Certificates of survey shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and shall conform to monumentation and surveying requirements promulgated under this chapter.

History: En. Sec. 14, Ch. 500, L. 1973; R.C.M. 1947, 11-3872; amd. Sec. 2, Ch. 633, L. 1979.

76-3-405. Administration of oaths by registered land surveyor. (1) Every registered land surveyor may administer and certify oaths when:

(a) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(b) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(c) the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

(2) A record of oaths shall be preserved as part of the field notes of the survey and noted on the certificate of survey filed under 76-3-404.

History: En. Sec. 17, Ch. 500, L. 1973; R.C.M. 1947, 11-3875; amd. Sec. 11, Ch. 266, L. 1979.

Part 5

Local Regulations

76-3-501. Local subdivision regulations. Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part).

76-3-502. Review of proposed regulations. Prior to adopting or amending subdivision regulations pursuant to this chapter, the governing body shall submit the proposed regulations or amendments to the division of planning and economic development of the department of community affairs for review.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part).

76-3-503. Hearing on proposed regulations. Before the governing body adopts subdivision regulations pursuant to 76-3-501, it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part).

76-3-504. Minimum requirements for subdivision regulations. (1) Not later than December 31, 1973, the department of community affairs, through its division of planning, shall, in conformance with the Montana Administrative Procedure Act, prescribe reasonable minimum requirements for subdivision regulations adopted pursuant to this chapter.

(2) The minimum requirements shall include detailed criteria for the content of the environmental assessment required by this chapter. In prescribing the minimum contents of the subdivision regulations, the department of community affairs, through its division of planning, shall require the submission by the subdivider to the governing body of an environmental assessment.

(3) The department shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in a proposed subdivision. Such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein, and the failure of any agency to complete a review of a plat shall not be a basis for rejection of the plat by the governing body.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(2), (3).

76-3-505. Provision for summary review of minor subdivisions. Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds, and which have been approved by the department of health and environmental sciences where such approval is required by part 1 of chapter 4; provided that reasonable local regulations may contain additional requirements for summary approval.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(5).

76-3-506. Provision for granting variances. Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(6).

76-3-507. Provision for bonding requirements to insure construction of public improvements. Local regulations may provide that, in lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall require a bond or other reasonable security, in an amount and with surety and conditions satisfactory to it, providing for and securing the construction and installation of such improvements within a period specified by the governing body and expressed in the bonds or other security.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(7).

76-3-508. Procedure if local government fails to adopt regulations. In the event that any governing body has not adopted subdivision regulations by July 1, 1974, which meet or exceed the prescribed minimum requirements, the department shall, through its division of planning, no later than January 1, 1975, promulgate reasonable regulations to be enforced by the governing body. If at any time thereafter the governing body adopts its own subdivision regulations, these shall supersede those promulgated by the department but shall be no less stringent.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(8).

Part 6

Local Review Procedure

76-3-601. Submission of preliminary plat for review. (1) Except where a plat is eligible for summary approval, the subdivider shall present to the governing body or the agent or agency designated thereby the preliminary plat of the proposed subdivision for local review. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat shall be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town or within 2 miles of a second-class city or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies.

(3) This section and 76-3-604, 76-3-605, and 76-3-608 through 76-3-610 do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part).

76-3-602. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision plats.

History: En. Sec. 10, Ch. 500, L. 1973; R.C.M. 1947, 11-3868.

76-3-603. Contents of environmental assessment. Where required, the environmental assessment shall accompany the preliminary plat and shall include:

(1) a description of every body or stream of surface water as may be affected by the proposed subdivision, together with available groundwater information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(2) maps and tables showing soil types in the several parts of the proposed subdivision and their suitability for any proposed developments in those several parts;

(3) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection;

(4) such additional relevant and reasonable information as may be required by the department through its division of planning.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(4).

76-3-604. Review of preliminary plat. (1) The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to chapter 1, to the provisions of this chapter, and to rules prescribed or adopted pursuant to this chapter.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within 60 days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body rejects or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part).

76-3-605. Hearing on preliminary plat. (1) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body.

(2) Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider and each property owner of record immediately adjoining the land included in the plat shall also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(3) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than 10 days after the public hearing.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part).

76-3-606. Dedication of land to public — cash donations. (1) A plat of a residential subdivision shall show that one-ninth of the combined area of lots 5 acres or less in size and one-twelfth of the combined area of lots greater than 5 acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than 10 acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.

(2) Where the dedication of land for parks or playgrounds is undesirable because of size, topography, shape, location, or other circumstances, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.

(3) The park dedication and cash in lieu requirements of subsections (1) and (2) do not apply to any division that creates only one additional lot.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(1), (2); amd. Sec. 1, Ch. 703, L. 1979.

76-3-607. Waiver of land dedication and cash donation requirements. (1) If the proposed plat provides for a planned unit development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside therein, the governing body may issue an order waiving land dedication and cash donation requirements.

(2) If a tract of land is being developed under single ownership as a part of an overall plan and part of the tract has been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements of 76-3-606 for the entire tract being developed, the governing body shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

(3) The local governing body may waive dedication and cash donation requirements:

(a) where all of the parcels in a subdivision are 5 acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by mutual consent of the governing body and the property owner that the parcels in the subdivision will never be subdivided into parcels of less than 5 acres and that all parcels in the subdivision will be used for single family dwellings;

(b) when the subdivider agrees to create a property owners' association for the proposed subdivision and to deed to the association land to be held in perpetuity for use as parks or playgrounds, and the area of land to be deeded to the association shall equal the amount that would otherwise have been dedicated to public use;

(c) for subdivision to be created by rent or lease where the subdivider agrees to develop parks or playgrounds within the subdivision for the common use of the residents of the subdivision, and the area of land to be reserved for this purpose shall equal the amount that would otherwise have been dedicated to the public.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(3) thru (7).

76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision shall be whether the preliminary plat, environmental assessment, public hearing, planning board recommendations, and additional information demonstrate that development of the subdivision would be in the public interest. The governing body shall disapprove any subdivision which it finds not to be in the public interest.

(2) To determine whether the proposed subdivision would be in the public interest, the governing body shall issue written findings of fact which weigh the following criteria for public interest:

(a) the basis of the need for the subdivision;
(b) expressed public opinion;
(c) effects on agriculture;
(d) effects on local services;
(e) effects on taxation;
(f) effects on the natural environment;
(g) effects on wildlife and wildlife habitat; and
(h) effects on the public health and safety.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(4).

76-3-609. Review procedure for minor subdivisions. Subdivisions containing five or fewer parcels where proper access to all lots is provided and in which no land is to be dedicated to the public for parks or playgrounds are to be reviewed as follows:

(1) The governing body must approve, conditionally approve, or disapprove the first such subdivision from a tract of record within 35 days of the submission of an application for approval thereof.

(2) The governing body shall state in writing the conditions which must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision.

(3) The requirements for holding a public hearing and preparing an environmental assessment shall not apply to the first such subdivision created from a tract of record.

(4) Subsequent subdivisions from a tract of record shall be reviewed under 76-3-505 and regulations adopted pursuant to that section.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(6).

76-3-610. Effect of approval of preliminary plat. (1) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year.

(2) After the preliminary plat is approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within 1 year.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part).

76-3-611. Review of final plat. (1) The governing body shall examine every final subdivision plat and shall approve it when and only when it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant thereto.

(2) (a) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions set forth by or pursuant to this chapter, the examining land surveyor shall so certify in a printed or stamped certificate on the plat or certificate of survey. Such certificate shall be signed by him.

(b) No land surveyor shall act as an examining land surveyor in regard to a plat or certificate of survey in which he has a financial or personal interest.

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part).

76-3-612. Abstract of title required for review process. (1) The subdivider shall submit with the final plat a certificate of a licensed title abstracter showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land.

(2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

History: En. Sec. 7, Ch. 500, L. 1973; amd. Sec. 5, Ch. 334, L. 1974; R.C.M. 1947, 11-3865.

76-3-613. Index of plats to be kept by county clerk and recorder. (1) The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey.

(2) This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

History: **En. Sec. 15, Ch. 500, L. 1973; R.C.M. 1947, 11-3873.**

76-3-614. Correction of recorded plat. When a recorded plat does not definitely show the location or size of lots or blocks or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk and recorder. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

History: **En. Sec. 16, Ch. 500, L. 1973; R.C.M. 1947, 11-3874.**

CHAPTER 4

STATE REGULATION OF SUBDIVISIONS

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Part 1

Sanitation in Subdivisions

76-4-101. Public policy. It is the public policy of this state to extend present laws controlling water supply, sewage disposal, and solid waste disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems to protect the quality and potability of water for public water supplies and domestic uses and to protect the quality of water for other beneficial uses, including uses relating to agriculture, industry, recreation, and wildlife.

History: En. Sec. 148, Ch. 197, L. 1967; amd. Sec. 1, Ch. 509, L. 1973; R.C.M. 1947, 69-5001.

76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

(1) "Board" means the board of health and environmental sciences.

(2) "Department" means department of health and environmental sciences.

(3) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(4) "Public water supply system" or "public sewage disposal system" means, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

(5) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(6) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(7) "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part).

76-4-103. What constitutes subdivision. A subdivision shall comprise only those parcels of less than 20 acres which have been created by a division of land, and the plat thereof shall show all such parcels, whether contiguous or not.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part).

76-4-104. Rules for administration and enforcement. (1) The department shall adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, groundwater level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall further provide for:

(a) the furnishing to the department of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area;

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat.

History: En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; R.C.M. 1947, 69-5005(part).

76-4-105. Lot fees. (1) The department shall adopt reasonable rules setting forth fees, not to exceed $25 per parcel, for services rendered in the review of plats and subdivisions. The rules shall provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the agency fund provided for in 17-2-102. The fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of lot fees between the local governing body and the department as provided in

76-4-128. When a subdivision is reviewed under the master plan provisions of 76-4-124, the local governing body shall, within 20 days after receiving an application under the Montana Subdivision and Platting Act, distribute the lot fees as determined by this subsection.

(3) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities.

History: Ap. p. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; Sec. 69-5005, R.C.M. 1947; Ap. p. Sec. 150, Ch. 197, L. 1967; amd. Sec.4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; Sec. 69-5003, R.C.M. 1947; R.C.M. 1947, 69-5003(part), 69-5005(part).

76-4-106. Cooperation with other governmental agencies. (1) The department may require the use of records of all state, county, and municipal agencies and may seek the assistance of those agencies.

(2) State, county, and city officers and employees, including local health officers and sanitarians, shall cooperate with the board and the department in furthering the purposes of this part so far as is practical and consistent with their own duties.

History: En. Sec. 8, Ch. 509, L. 1973; R.C.M. 1947, 69-5009.

76-4-107. Authority to inspect and monitor. In order to carry out the objectives of this part, to monitor the installation of sewage disposal and water supply systems, and to prevent the occurrence of water pollution problems associated with subdivision development, the department or the board whenever a public water supply or public sewage disposal system is proposed or has been constructed may:

(1) enter upon any public or private property, at reasonable times and after presentation of appropriate credentials by an authorized representative of the department, to inspect such systems in order to assure that the plans and specifications approved for the system have been adhered to and that the provisions of this part, rules, or orders are being satisfied;

(2) require as a condition of approval that records concerning the operation of a public sewage disposal or public water supply system be maintained or that monitoring equipment or wells be installed, used, and maintained for the collection of data related to water quality.

History: En. 69-5010 by Sec. 1, Ch. 557, L. 1977; R.C.M. 1947, 69-5010.

76-4-108. Enforcement. (1) If a written complaint alleging violation is made to the department or if the department has reason to believe that a person has violated this part or any rule thereunder and if a violation is found to exist, the department shall issue notice and hold a hearing pursuant to the Montana Administrative Procedure Act.

(2) In addition to or instead of issuing an order, the department may initiate appropriate action for injunction or for recovery of penalty as provided in this part.

History: En. Sec. 6, Ch. 509, L. 1973; R.C.M. 1947, 69-5007.

76-4-109. Penalties. (1) A person violating any provision of this part, except 76-4-122(1), or any rule or order issued under this part is guilty of an offense and subject to a fine of not to exceed $1,000.

(2) Action under subsection (1) does not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(3) The purpose of this section is to provide additional and cumulative remedies.

History: En. Sec. 7, Ch. 509, L. 1973; R.C.M. 1947, 69-5008(part).

76-4-110. Additional remedies available. This part does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does any provision of this part or any act done by virtue of it estop the state, any municipality or other subdivision of the state, or any person in the exercise of his rights in equity or under the common law or statutory law.

History: En. Sec. 7, Ch. 509, L. 1973; R.C.M. 1947, 69-5008(part).

76-4-111. Exemption for certain condominiums. Condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from provisions of this part.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part).

76-4-112 through 76-4-120 reserved.

76-4-121. Restrictions on subdivision activities. Until the local governing body has certified that a subdivision is to be provided with municipal facilities for a supply of water and disposal of sewage and solid waste or that the department has indicated that the subdivision is subject to no restrictions, a person may not file a subdivision plat with a county clerk and recorder, make disposition of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(4).

76-4-122. Filing or recording of noncomplying map or plat prohibited. (1) The county clerk and recorder shall not file or record any map or plat showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat for filing until one of the following conditions has been met:

(a) the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the department, and the department has indicated by stamp or certificate that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction whenever department approval is necessary; or

(b) whenever department approval is not necessary, the person wishing to file the plat has obtained a certificate from the governing body that the subdivision is inside a master planning area and will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste.

History: (1)En. Sec. 151, Ch. 197, L. 1967; R.C.M. 1947, 69-5004; (2)En. Sec. 150, Ch. 197, L. 1967; amd. Sec.4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; Sec. 69-5003, R.C.M. 1947; R.C.M. 1947, 69-5003(7), 69-5004.

76-4-123. Department review and approval required outside master planning areas. Outside master planning areas adopted pursuant to chapter 1, a person may not file a subdivision plat with a county clerk and recorder, make disposition of a lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect a building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy a permanent building in a subdivision until the department has indicated that the subdivision is subject to no sanitary restriction.

History: **En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(1).**

76-4-124. Type of review and approval required within master planning areas. (1) Within master planning areas adopted pursuant to chapter 1, a subdivision is not subject to sanitary restrictions when the local governing body certifies that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision as provided in 76-4-127. In this case, department approval is not necessary.

(2) To the extent that municipal facilities for the supply of water or disposal of sewage or solid waste are not to be provided for a subdivision as certified to by the governing body, the person wishing to subdivide must obtain department approval as provided in 76-4-122(2)(a).

History: **En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(2), (3).**

76-4-125. Review of subdivisions excluded from all or some of the provisions of the subdivision and platting act. (1) When a subdivision as defined in this part is excluded from the provisions of 76-3-302 and 76-3-401 through 76-3-403, but not 76-3-201, and the subdivision is otherwise subject to the provisions of this part, plans and specifications of the subdivision as defined in this part shall be submitted to the department and the department shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the department shall be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present to the department a preliminary plan of the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the department.

(b) The department must give final action of the proposed plan within 60 days unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(2) A subdivision excluded from the provisions of chapter 3 shall be submitted for review by the department according to the provisions of this part, except that the following divisions are not subject to review by the department:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that no dwelling or structure requiring water or sewage disposal is to be erected on the additional acquired parcel; and

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(8), (10).

76-4-126. Right to hearing. Upon denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved by such denial may request a hearing before the board. Such hearings will be held pursuant to the Montana Administrative Procedure Act.

History: En. Sec. 5, Ch. 509, L. 1973; R.C.M. 1947, 69-5006.

76-4-127. Notice of certification to department that water and waste services will be provided by local government. (1) When a subdivision is reviewed under the master plan provisions of 76-4-124, the local governing body shall, within 20 days after receiving an application under the Montana Subdivision and Platting Act, send notice of certification to the department that a subdivision has been submitted for approval and that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision.

(2) The notice of certification shall include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat or a final plat where a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) a copy of the master plan if one has not yet been submitted to the department;

(g) the relative location of the subdivision to the city or town; and

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(part).

76-4-128. Delegation of department review to local government. (1) The department shall delegate to a local government the authority to review a subdivision under this part when the subdivision involves five or fewer parcels and the local government has qualified personnel to adequately review the water supply and sewage and solid waste disposal facilities proposed for the subdivision.

(2) When a local government has conducted a review of a subdivision containing five or fewer parcels pursuant to this section, it shall advise the department of its recommendation for approval or disapproval of the subdivision. The department shall, within 10 days after receiving the recommendation of the local government, make a final decision on the subdivision.

(3) In delegating authority pursuant to this section, the department shall enter into an agreement with the local government wherein the department shall agree to transfer not less than $10 of the fee per parcel collected pursuant to 76-4-105 to the local government for the review of subdivisions containing five or fewer parcels.

History: En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; R.C.M. 1947, 69-5005(5).

76-4-129. Joint application form and concurrent review. (1) Within 90 days after July 1, 1977, the department and the department of community affairs shall prepare and distribute a joint application form that can be used by an applicant to apply for approval of a subdivision under the provisions of this part and the provisions of chapter 3. When an application is received by either the department or a local government, the department or local government is responsible for forwarding the appropriate parts of the application to the other entity.

(2) The review required by this part and the provisions of chapter 3 shall occur concurrently.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(11).

76-4-130. Deviation from plans or specifications. A person may not construct or use a facility which deviates from the plans and specifications filed with the department until the department has approved the deviation.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(9).

76-4-131. Applicability of public water supply laws. The exclusions provided for in 76-4-121 through 76-4-130 shall not relieve any person of the duty to comply with the requirements of Title 75, chapter 6.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(6).

Parts 2 through 10 reserved

Part 11

Out-of-State Sales of In-State Subdivisions

76-4-1101. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Blanket encumbrance" shall be considered to mean a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land or an agreement affecting more than one such lot or parcel by which the owner or subdivider holds said subdivision under an option, contract to sell, or trust agreement.

(2) "Board" means the board of realty regulation provided for in 2-15-1644.

(3) "Department" means the department of professional and occupational licensing, provided for in Title 2, chapter 15, part 16.

(4) "Subdivision" and "subdivided lands" mean any tract of land which is hereafter divided into five or more parcels, a parcel of which is less than 5 acres in size, and which is offered for sale or lease outside the state of Montana.

History: (1)En. Sec. 9, Ch. 191, L. 1963; Sec. 67-2109, R.C.M. 1947; (2) thru (4)En. Sec. 1, Ch. 191, L. 1963; amd. Sec. 321, Ch. 350, L. 1974; Sec. 67-2101, R.C.M. 1947; R.C.M. 1947, 67-2101, 67-2109; amd. Sec. 6, Ch. 497, L. 1979.

76-4-1102. Rules. The board may adopt rules necessary for the enforcement of this part.

History: En. Sec. 2, Ch. 191, L. 1963; amd. Sec. 322, Ch. 350, L. 1974; R.C.M. 1947, 67-2102.

76-4-1103. Notice of intention to offer subdivided lands. Prior to the time when subdivided lands are to be offered for sale or lease outside the state of Montana, the owner, his agent, or the subdivider shall notify the board in writing of his intention to sell or lease such offering.

History: En. Sec. 3, Ch. 191, L. 1963; amd. Sec. 323, Ch. 350, L. 1974; R.C.M. 1947, 67-2103(1).

76-4-1104. Contents of notice. The notice of intention shall contain the following information:

(1) the name and address of the owner;

(2) the name and address of the subdivider;

(3) the legal description and area of lands, together with a map showing the layout proposed and relation to existing streets or roads;

(4) a true statement of the conditions of the title to the land, particularly including all encumbrances thereon;

(5) a true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any and all forms of conveyance intended to be used;

(6) a true statement of the provision for legal access, sewage disposal, and public utilities in the proposed subdivision, including water, electricity, gas, and telephone facilities;

(7) copies of any advertising, information, promotion brochures, or similar material depicting the existing property or as it is to exist, which might cause or tend to induce purchase of the property or an interest therein when the material is or might be circulated outside of this state;

(8) such other information as the owner, his agent, or the subdivider may desire to present.

History: En. Sec. 3, Ch. 191, L. 1963; amd. Sec. 323, Ch. 350, L. 1974; R.C.M. 1947, 67-2103(2).

76-4-1105. Fee for filing notice of intention. A filing fee of $50 shall accompany the notice of intention provided for in 76-4-1103.

History: En. Sec. 4, Ch. 191, L. 1963; R.C.M. 1947, 67-2104.

76-4-1106. Additional information required by board. After receiving the notice of intention, the board may require additional information concerning the project as it considers necessary, for which it may prepare a questionnaire for the owner, his agent, or the subdivider to answer.

History: En. Sec. 5, Ch. 191, L. 1963; amd. Sec. 324, Ch. 350, L. 1974; R.C.M. 1947, 67-2105.

76-4-1107. Fee for filing board questionnaire. When the questionnaire provided for in 76-4-1106 is filed, the person filing the questionnaire shall pay to the department a filing fee of $100.

History: En. Sec. 6, Ch. 191, L. 1963; amd. Sec. 325, Ch. 350, L. 1974; R.C.M. 1947, 67-2106(part).

76-4-1108. Disposition of fees and charges. (1) Fees and charges provided for by this part shall be paid to the department and deposited by it with the state treasurer.

(2) The state treasurer shall place 5% of these fees and charges in the general fund and 95% of these fees and charges in the earmarked revenue fund.

(3) Fees deposited in the earmarked revenue fund may be used to pay claims for expense incurred in the administration of this part when the claims have been approved as provided by law.

History: En. Sec. 6, Ch. 191, L. 1963; amd. Sec. 325, Ch. 350, L. 1974; R.C.M. 1947, 67-2106(part).

76-4-1109. Investigation of subdivisions. The board may investigate any subdivision being offered for sale or lease under the provisions of this part. For the purpose of an investigation, the board may:

(1) use and rely upon any relevant information or data concerning a subdivision obtained by it from the federal housing administration, the United States veterans administration, or any other agency having comparable duties and functions in relation to subdivisions or property therein;

(2) require reports prepared by competent authorities as to any hazard to which the subdivision may be subject or any factor which might affect the value or utility of lots or parcels within the subdivision;

(3) require evidence of compliance with the requirements of appropriate authorities;

(4) require an inspection of the subdivision to be made.

History: En. Sec. 7, Ch. 191, L. 1963; amd. Sec. 326, Ch. 350, L. 1974; R.C.M. 1947, 67-2107.

76-4-1110. Inspection of records by board. (1) Records of the sale or lease of parcels within a subdivision subject to the provisions of this part shall be subject to inspection by the board.

(2) The board shall be notified of any change of address affecting the location of the owner's, subdivider's, or agent's records or of any change in depository for the impounding of purchasers' money in accordance with the provisions herein.

History: En. Sec. 13, Ch. 191, L. 1963; amd. Sec. 330, Ch. 350, L. 1974; R.C.M. 1947, 67-2113.

76-4-1111. Notice of multiple sales or leases to one purchaser or lessee. When five or more lots or parcels within a subdivision subject to the provisions of this part are optioned, leased, or sold to another or when an interest therein is acquired by one owner, lessee, or optionee, the board shall be notified by the parties to the transaction.

History: En. Sec. 12, Ch. 191, L. 1963; amd. Sec. 329, Ch. 350, L. 1974; R.C.M. 1947, 67-2112.

76-4-1112. Required provisions in subdivision sales contracts. Every sales contract relating to the purchase of real property in a subdivision subject to the provisions of this part shall clearly set forth the legal description of the property, the principal amount of the blanket encumbrances outstanding at the date of the contract, and the terms of the contract.

History: **En. Sec. 11, Ch. 191, L. 1963; R.C.M. 1947, 67-2111.**

76-4-1113. Required provisions for protection of purchasers and lessees. It is unlawful for the owner or subdivider to offer to sell or lease or to sell or lease lots or parcels within a subdivision to persons residing out of the state of Montana unless one of the following conditions is complied with:

(1) All sums paid or advanced by purchasers shall be impounded in an escrow or other depository acceptable to the board until:

(a) (i) the title or other interest contracted for, whether it be title of record, equitable, or other interest, is delivered to such purchaser or lessee; and

(ii) a proper release is obtained from any such blanket encumbrance; or

(b) either the owner, subdivider, purchaser, or lessee defaults in his undertaking, in which event the money shall be paid to the party who is not in default and is entitled thereto.

(2) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the board until a proper release from such blanket encumbrance is obtained and title or other interest contracted for is delivered to such purchaser or lessee.

(3) A bond in the amount of $2,500 to the state of Montana is furnished to the board for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to the terms as may be approved by the board, which shall provide for the return of moneys paid or advanced by any purchaser or lessee for or on account of purchase or lease of any such lot or parcel if the interest contracted for is not delivered or a proper release from such blanket encumbrance is not obtained. However, if the purchaser or lessee, by reason of default, is not entitled to the return of the money or any portion thereof, then the bond shall be exonerated to the extent of the amount of the money to which such purchaser or lessee is not entitled.

History: **En. Sec. 10, Ch. 191, L. 1963; amd. Sec. 328, Ch. 350, L. 1974; R.C.M. 1947, 67-2110.**

76-4-1114. Restriction on advertising. It is unlawful for any person to incorporate in any advertising material or use for any advertising purposes the results or findings of the board as provided for in this part.

History: **En. Sec. 8, Ch. 191, L. 1963; amd. Sec. 327, Ch. 350, L. 1974; R.C.M. 1947, 67-2108.**

76-4-1115. Misdemeanors enumerated. The following acts are misdemeanors:

(1) the willful violation of or failure to comply with any of the provisions of this part;

(2) the willful violation, failure, omission, or neglect to obey, observe, or comply with any order, permit, decision, demand, or requirement of the board;

(3) the offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner of subdivided lands or a subdivision,

wherever situated, which is being offered for sale outside the state of Montana without first complying with the provisions of this part.

History: En. Sec. 16, Ch. 191, L. 1963; amd. Sec. 332, Ch. 350, L. 1974; R.C.M. 1947, 67-2116; amd. Sec. 12, Ch. 266, L. 1979.

76-4-1116. Enforcement procedures — hearing. (1) When in the opinion of the board a person has violated or is violating or is about to violate any of the provisions of this part, the board may order the person to desist and refrain from doing so.

(2) If an examination of the project shows that the sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees of lots or parcels in a subdivision, the board may issue an order prohibiting the sale or lease, or either, of the property in this state.

(3) If, after such an order is made, a request for a hearing by the board is filed in writing and a hearing is not held within 60 days thereafter, the order is rescinded.

History: En. Sec. 14, Ch. 191, L. 1963; amd. Sec. 331, Ch. 350, L. 1974; R.C.M. 1947, 67-2114.

76-4-1117. Accrual of cause of action. (1) For the purpose of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or criminal, involving any violation of this part, the cause of action shall be considered to have accrued not earlier than the time of recording with the county clerk and recorder of the county in which the property was sold or leased in violation of this part, which recording describes a lot or parcel so wrongfully sold or leased.

(2) This section does not prohibit the maintenance of such action at any time during the recording of such instruments.

History: En. Sec. 15, Ch. 191, L. 1963; R.C.M. 1947, 67-2115; amd. Sec. 13, Ch. 266, L. 1979.

Part 12

In-State Sales of Out-of-State Subdivisions

76-4-1201. Short title. This part may be cited as the "Foreign Land Sales Practices Act".

History: En. Sec. 20, Ch. 97, L. 1969; R.C.M. 1947, 67-2136.

76-4-1202. Definitions. When used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of realty regulation provided for in 2-15-1644.

(2) "Chairman" means the chairman of the board of realty regulation.

(3) "Department" means the department of professional and occupational licensing, provided for in Title 2, chapter 15, part 16.

(4) "Disposition" includes sale, lease, assignment, or any other transaction concerning a subdivision if undertaken for gain or profit.

(5) "Offer" includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land if undertaken for gain or profit.

(6) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(7) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.

(8) "Subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner.

(9) "Subdivision" and "subdivided lands" mean any land which is divided or is proposed to be divided for the purpose of disposition into five or more lots, parcels, units, or interests and also include any land, whether contiguous or not, if five or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

History: En. Sec. 1, Ch. 97, L. 1969; amd. Sec. 333, Ch. 350, L. 1974; R.C.M. 1947, 67-2117; amd. Sec. 7, Ch. 497, L. 1979.

76-4-1203. Administration and rules. (1) This part shall be administered by the board. In the administration of this part, the board shall have all of the powers and duties as stated in 37-51-201(2), (3), and (4) and 37-51-205.

(2) The board shall adopt reasonable rules relating to the administration of this part, but not inconsistent therewith, which may be amended or repealed. The rules shall include but need not be limited to:

(a) provisions for advertising standards to assure full and fair disclosure;

(b) provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for;

(c) provisions for operating procedures; and

(d) other rules necessary and proper to accomplish the purpose of this part.

History: En. Secs. 2, 10, Ch. 97, L. 1969; amd. Secs. 334, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part), 67-2126(1); amd. Sec. 8, Ch. 497, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent adopted with HB 606 (Ch. 497, L. 1979) provided: "A statement of intent is required for HB 606 in that it delegates rulemaking authority to the board of realty regulation in Section 8.

Section 8 allows the board to prescribe rules relating to:

'(a) provisions for advertising standards to assure full and fair disclosure;

(b) provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for;

(c) provisions for operating procedures; and

(d) other rules necessary and proper to accomplish the purpose of this part.'

It is intended that only those rules necessary to carry out the above functions will be adopted by the board of realty regulation. All rules should have as their primary purpose the protection of the public. No rules may be adopted which restrict entry into the real estate industry except as expressly authorized by statute."

76-4-1204. Board involvement in lawsuits. The board may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the department notice of the suit and copies of all pleadings.

History: En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(4).

76-4-1205. Cooperation with other states. The board shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms; uniform public offering statements, advertising standards, and rules; and common administrative practices.

History: En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(6).

76-4-1206. Investigative powers of board. The board may:

(1) make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this part or any rule or order hereunder or to aid in the enforcement of this part or in the prescribing of rules and forms hereunder;

(2) require or permit any person to file a statement in writing, under oath or otherwise as the board determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) contract with similar agencies in this state or other jurisdictions to perform investigative functions.

History: En. Secs. 10, 11, Ch. 97, L. 1969; amd. Secs. 340, 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(5)(b), 67-2127(1).

76-4-1207. Procedure to gather information — subpoena power. (1) For the purpose of any investigation or proceeding under this part, the board or any officer designated by rule may administer oaths or affirmations and, upon its own motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(2) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the board may apply to any district court of this state for an order compelling compliance.

History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(2), (3).

76-4-1208. Appeals procedure. (1) Any person directly affected by any ruling, determination, or decision of the board or any officer thereof may appeal to the board for hearing and review by serving written notice of appeal upon the chairman within 15 days after such rule, determination, or decision is mailed to or served upon the person. Notice of appeal shall state specifically the matters that the appellant desires reviewed but shall not act as a stay unless otherwise provided by this part.

(2) Upon receipt of notice of appeal, the chairman shall serve upon the appellant notice of time and place of said hearing not less than 15 days prior to the date of hearing, to be held in the offices of the department in Helena, Montana, or elsewhere as the chairman shall order.

(3) The board may postpone or continue a hearing from time to time as it considers necessary.

(4) If the appellant or his representative fails to appear at the hearing after due notice and good cause for continuance is not shown, the board shall render its decision upon the evidence presented to it.

History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(part).

76-4-1209. General rules governing appeals. (1) The board is not bound by any laws of evidence of this state.

(2) No member of the board shall hear any matter in which he has a personal interest, nor shall he represent any person or witness at the hearing.

(3) (a) Four members of the board shall constitute a quorum, one of whom must be the chairman.

(b) Any party to the proceedings may challenge any board member in writing, served upon the chairman of the board 5 days in advance of any scheduled appeal hearing, stating the reasons therefor, and if the board shall find merit in the challenge, it shall disqualify the challenged member. If disqualification reduces the board membership to less than four, the remaining members shall appoint disinterested people to fill the vacancies to provide a four-man hearing board.

(4) The decision of any three board members shall constitute the decision of the board on any issue presented for its decision.

History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(part).

76-4-1210. Scope of review — board jurisdiction. The board shall have continuing jurisdiction over all matters heard by it to examine additional evidence or to hear additional testimony and to revise, modify, alter, amend, or reverse all orders, demands, findings, and decisions made by it at any time and shall not lose jurisdiction until jurisdiction has been taken by a court of competent jurisdiction in a proceeding filed in such court.

History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(part).

76-4-1211. Application fee. The board shall charge a fee not to exceed $500 for each application for registration of subdivided lands received in accordance with this part.

History: En. Sec. 2, Ch. 97, L. 1969; amd. Sec. 334, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part).

76-4-1212. Disposition of fee. The application fee shall be paid into the earmarked revenue fund to the credit of the board and is hereby appropriated for the purposes of carrying out the provisions of this part, subject to 37-1-101(6).

History: En. Sec. 2, Ch. 97, L. 1969; amd. Sec. 334, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part).

76-4-1213. Financial management. (1) All expenditures of the funds by the board under the provisions of this part shall be certified and approved by the board and paid by the appropriate state officials. Payment shall be made upon warrants appropriately drawn out of the proper funds.

(2) The department shall provide a system of accounting which shall show the amount of money received therefor and also an itemized statement of expenses in connection therewith.

(3) The board may make orders concerning the disbursement of the money in the earmarked revenue fund, including the payment of compensation and expenses of board members.

(4) The board may accept grants-in-aid from any source.

History: En. Secs. 2, 10, Ch. 97, L. 1969; amd. Secs. 334, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part), 67-2126(5)(c).

76-4-1214 through 76-4-1220 reserved.

76-4-1221. Exemptions for certain subdivisions. Unless the method of disposition is adopted for the purpose of evasion of this part, the provisions of this part do not apply to:

(1) a subdivision as to which the plan of disposition is to dispose to 10 or fewer persons;

(2) a subdivision as to which the board has granted an exemption as provided in 76-4-1225.

History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part).

76-4-1222. Exemptions for certain securities and notes. Unless the method of disposition is adopted for the purpose of evasion of this part, the provisions of this part do not apply to offers or dispositions of:

(1) securities currently registered with the securities commissioner of this state;

(2) any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by the securities commissioner of this state;

(3) securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

(4) evidences of indebtedness secured by a mortgage or deed of trust of real estate.

History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part); amd. Sec. 8, Ch. 351, L. 1979.

76-4-1223. Exemptions for certain transactions. Unless the method of disposition is adopted for the purpose of evasion of this part, the provisions of this part do not apply to offers or dispositions of an interest in land:

(1) by a purchaser of subdivided lands for his own account in a single or isolated transaction;

(2) if fewer than five separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of 12 months;

(3) on which there is a residential, commercial, or industrial building or as to which there is a legal obligation on the part of the seller to construct such a building within 2 years from date of disposition;

(4) to persons who are engaged in the business of construction of buildings for resale or to persons who acquire an interest in subdivided lands for the purpose of engaging and do engage in the business of construction of buildings for resale.

History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part).

76-4-1224. Miscellaneous exemptions. Unless the method of disposition is adopted for the purpose of evasion of this part, the provisions of this part do not apply to offers or dispositions of an interest in land:

(1) pursuant to court order;

(2) by any government or government agency;

(3) as cemetery lots or interests.

History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part).

76-4-1225. Exemption granted by board. The board may exempt a subdivision of 25 or fewer lots, parcels, units, or interests from the provisions of this part if it determines that the plan of promotion and disposition is primarily directed to persons in the local community in which the subdivision is situated.

History: En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(7).

76-4-1226. Regulation of disposition of interests in subdivisions. Unless the subdivided lands or the transaction is exempt by 76-4-1221 through 76-4-1224:

(1) no person may offer or dispose in this state of any interest in subdivided lands located without this state prior to the time the subdivided lands are registered in accordance with this part;

(2) no person may dispose of any interest in subdivided lands without this state unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition.

History: En. Sec. 4, Ch. 97, L. 1969; R.C.M. 1947, 67-2120.

76-4-1227. Application for registration. (1) The application for registration of subdivided lands shall be filed with the department as prescribed by the board's rules.

(2) The board may accept registrations filed in other states or with the federal government.

History: En. Secs. 5, 10, Ch. 97, L. 1969; amd. Sec. 335, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(part), 67-2126(5)(a).

76-4-1228. Contents of application relating to subdivided land. The application shall contain the following documents and information:

(1) a legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units, or interests, and the relation of the subdivided lands to existing streets, roads, and other off-site improvements;

(2) a statement, in a form acceptable to the board, of the condition of the title to the subdivided lands including encumbrances, as of a specified date within 30 days of the date of application, by a title opinion of an attorney licensed to practice in this state, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the board;

(3) copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;

(4) copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(5) if there is a lien or encumbrance affecting more than one lot, parcel, unit, or interest, a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(6) copies of instruments creating easements, restrictions, or other encumbrances affecting the subdivided lands;

(7) a statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands;

(8) a statement of the existing provisions for access, sewage, disposal, water, and other public utilities in the subdivision; a statement of the improvements to be installed; the schedule for their completion; and a statement as to the provisions for improvement maintenance.

History: **En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(b), (f), (g), (h), (i), (j), (k), (l).**

76-4-1229. Contents of application relating to applicant. The application shall contain the following information and documents:

(1) the applicant's name and address and the form, date, and jurisdiction of organization and the address of each of its offices in this state;

(2) the name, address, and principal occupation for the past 5 years of every director and officer of the applicant or person occupying a similar status or performing similar functions and the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within 30 days of the filing of the application.

History: **En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(d), (e).**

76-4-1230. Additional contents of application. The application shall contain the following information and documents:

(1) an irrevocable appointment of the department to receive service of any lawful process in any noncriminal proceeding arising under this part against the applicant or his personal representative;

(2) the states or jurisdictions in which an application for registration or similar document has been filed and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;

(3) a narrative description of the promotional plan for the disposition of the subdivided lands, together with copies of all advertising material which has been prepared for public distribution by any means of communication;

(4) the proposed public offering statement;

(5) any other information, including any current financial statement, which the board by its rules requires for the protection of purchasers.

History: **En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(a), (c), (m), (n), (o).**

76-4-1231. Consolidation of application for subsequent offerings. If the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.

History: **En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(2).**

76-4-1232. Report of material changes affecting application. The subdivider shall immediately report any material changes in the information contained in an application for registration.

History: **En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(3).**

76-4-1233. Public offering statement. (1) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands.

(2) The proposed public offering statement submitted to the department shall be in a form prescribed by the board's rules and shall include the following:

(a) the name and principal address of the subdivider;

(b) a general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering;

(c) the significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;

(d) a statement of the use for which the property is offered;

(e) information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands;

(f) additional information required by the board to assure full and fair disclosure to prospective purchasers.

History: En. Sec. 6, Ch. 97, L. 1969; amd. Sec. 336, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(1).

76-4-1234. Regulation of advertising. (1) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the board requires it.

(2) No person may advertise or represent that the board approves or recommends the subdivided lands or disposition thereof.

(3) The board by rule or order, after reasonable notice and hearing, may require the filing of advertising material relating to subdivided lands prior to its distribution.

History: En. Secs. 6, 10, Ch. 97, L. 1969; amd. Secs. 336, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(2), 67-2126(2).

76-4-1235. Changes in public offering statement. (1) The board may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers.

(2) No change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the board and without making appropriate amendment of the public offering statement.

(3) A public offering statement is not current unless all amendments are incorporated.

History: En. Sec. 6, Ch. 97, L. 1969; amd. Sec. 336, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(3).

76-4-1236. Examination of application. On receipt of an application for registration in proper form by the department, the board shall forthwith initiate an examination to determine that:

(1) the subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer and, when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;

(2) there is reasonable assurance that all proposed improvements will be completed as represented;

(3) the advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the board in its rules and afford full and fair disclosure;

(4) the subdivider has not or, if a corporation, its officers, directors, and principals have not been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past 10 years and have not been subject to any injunction or administrative order entered by any authority within the past 10 years restraining a false or misleading promotional plan involving land dispositions;

(5) the public offering statement requirements of this part have been satisfied.

History: En. Sec. 7, Ch. 97, L. 1969; amd. Sec. 337, Ch. 350, L. 1974; R.C.M. 1947, 67-2123.

76-4-1237. Notice of filing. On receipt of the application for registration in proper form, the department shall issue a notice of filing to the applicant.

History: En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(part).

76-4-1238. Processing of application — registration of land. (1) Within 90 days from the date of the notice of filing, the board shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within 90 days from the date of notice of filing, the land shall be considered registered unless the applicant has consented in writing to a delay.

(2) If the board affirmatively determines upon inquiry and examination that the requirements of 76-4-1236 have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.

(3) (a) If the board determines upon inquiry and examination that any of the requirements of 76-4-1236 have not been met, it shall notify the applicant that the application for registration must be corrected in the particulars specified within 10 days. If the requirements are not met within the time allowed, the board shall enter an order rejecting the registration, which shall include the findings of fact upon which the order is based.

(b) The order rejecting the registration shall not become effective for 20 days, during which time the applicant may petition for reconsideration and is entitled to a hearing.

History: En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(part).

76-4-1239. Bonding requirements. No subdivided lands may be registered or considered registered until the subdivider has filed a bond with the department, executed by a surety company authorized to do business in this state, on a form approved by the board and in such amount as the board shall deem necessary to protect purchasers from damages arising out of violation of any provision of Montana law or any rule promulgated in furtherance thereof, when the volume of business of the subdivider and other related factors are taken into consideration, but in no event less than $50,000.

History: En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(4).

76-4-1240. Annual report. (1) Within 30 days after each annual anniversary of an order registering subdivided lands, the subdivider shall file a report with the department in the form prescribed by the rules of the board. The report shall reflect any material changes in information contained in the original application for registration.

(2) The board may permit the filing of annual reports within 30 days after the anniversary date of the consolidated registration instead of the anniversary date of the original registration.

History: En. Sec. 9, Ch. 97, L. 1969; amd. Sec. 339, Ch. 350, L. 1974; R.C.M. 1947, 67-2125.

76-4-1241. Cease and desist orders. The board may issue an order requiring a person to cease and desist from an unlawful practice and to take such affirmative action as in the judgment of the board will carry out the purposes of this part if the board determines after notice and hearing that the person has:

(1) violated any provision of this part;

(2) directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;

(3) made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the board;

(4) disposed of any subdivided lands which have not been registered with the board; or

(5) violated any lawful order or rule of the board.

History: En. Sec. 12, Ch. 97, L. 1969; amd. Sec. 342, Ch. 350, L. 1974; R.C.M. 1947, 67-2128(1).

76-4-1242. Temporary cease and desist order. If the board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the board whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person subject to the order. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held within 20 days to determine whether or not it becomes permanent.

History: En. Sec. 12, Ch. 97, L. 1969; amd. Sec. 342, Ch. 350, L. 1974; R.C.M. 1947, 67-2128(2).

76-4-1243. Revocation of registration. (1) A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:

(a) failed to comply with the terms of a cease and desist order;

(b) been convicted in any court subsequent to the filing of the application for registration of a crime involving fraud, deceptive practices, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

(c) disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;

(d) failed to faithfully perform any stipulation or agreement made with the board as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

(e) made intentional misrepresentations or concealed material facts in an application for registration.

(2) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(3) If the board finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

History: **En. Sec. 13, Ch. 97, L. 1969; amd. Sec. 343, Ch. 350, L. 1974; amd. Sec. 55, Ch. 359, L. 1977; R.C.M. 1947, 67-2129.**

76-4-1244. Injunctive relief for violations. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this part or a rule or order hereunder, the board, with or without prior administrative proceedings, may bring an action in any district court of this state to enjoin the acts or practices and to enforce compliance with this part or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The board is not required to post a bond in any court proceedings.

History: **En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(3).**

76-4-1245. Penalties. Any person who violates any provision of this part or who willfully violates any rule adopted under it or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact may be fined not less than $1,000 or more than $5,000 or may be imprisoned for not more than 2 years, or both.

History: **En. Sec. 15, Ch. 97, L. 1969; R.C.M. 1947, 67-2131; amd. Sec. 14, Ch. 266, L. 1979.**

76-4-1246. Extradition proceedings. In the proceedings for extradition of a person charged with a crime under this part, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

History: **En. Sec. 18, Ch. 97, L. 1969; R.C.M. 1947, 67-2134.**

76-4-1247. Civil remedies. (1) Any person who disposes of subdivided lands in violation of 76-4-1226, who in disposing of subdivided lands makes an untrue statement of a material fact, or who in disposing of subdivided lands omits a material fact required to be stated in a registration statement or public offering statement or necessary to make the statements made not misleading is liable as provided in this section to the purchaser unless, in the case of an untruth or omission, it is proved that the purchaser knew of the untruth or omission or that the person offering or disposing of subdivided lands did not know and in the exercise of reasonable care could not have known of the untruth or omission or that the purchaser did not rely on the untruth or omission.

(2) In addition to any other remedies, the purchaser, under subsection (1), may recover the consideration paid for the lot, parcel, unit, or interest in subdivided lands, together with interest at the rate of 6% per year from the date of payment, property taxes paid, costs, and reasonable attorneys' fees less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, he may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less interest at the rate of 6% per year on that amount from the date of disposition.

(3) A tender of reconveyance may be made at any time before the entry of judgment.

History: En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(a), (b), (e).

76-4-1248. Details of civil liability. (1) (a) Every person who directly or indirectly controls a subdivider liable under 76-4-1247(1), every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition, and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(b) There is a right to contribution as in cases of contract among persons so liable.

(2) Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration or public offering statement, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in his statement and only if he fails to prove that he did not know and in the exercise of the reasonable care of a man in his occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

History: En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(c), (d).

76-4-1249. Waiver of rights under part void. Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this part or any rule or order under it is void.

History: En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(f).

76-4-1250. Jurisdiction. Dispositions of subdivided lands are subject to this part, and any district court of this state has jurisdiction in claims arising under this part if:

(1) the subdivider's principal office is located in this state; or

(2) any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

History: **En. Sec. 17, Ch. 97, L. 1969; R.C.M. 1947, 67-2133.**

76-4-1251. Service of process. (1) In addition to the methods of service of process provided for in the Montana Rules of Civil Procedure, service may be made upon any person for any cause arising under the provisions of this part by delivering a copy of the process to the office of the department, but it is not effective unless:

(a) the plaintiff (which may be the board in a proceeding instituted by it) immediately sends a copy of the process and of the pleading by registered or certified mail to the defendant or respondent at his last known address; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(2) If any person, including any nonresident of this state, engages in conduct prohibited by this part or any rule or order hereunder and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct authorizes the department to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under this part or any rule or order hereunder with the same force and validity as if served on him personally. Notice shall be given as provided in subsection (1).

History: **En. Sec. 19, Ch. 97, L. 1969; amd. Sec. 344, Ch. 350, L. 1974; R.C.M. 1947, 67-2135.**

CHAPTER 5

FLOODPLAIN AND FLOODWAY MANAGEMENT

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Section

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Part 1

General Provisions

76-5-101. Findings. The people of the state of Montana find that:

(1) recurrent flooding of a portion of the state's land resources causes loss of life, damage to property, disruption of commerce and governmental services, and unsanitary conditions; all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state; and

(2) the public interest necessitates management and regulation of flood-prone lands and waters in a manner consistent with sound land and water use management practices which will prevent and alleviate flooding threats to life and health and reduce private and public economic losses.

History: En. Sec. 1, Ch. 393, L. 1971; R.C.M. 1947, 89-3501.

76-5-102. Policy and purposes. (1) The policy and purposes of parts 1 through 4 of this chapter are to:

(a) guide development of the floodway areas of this state consistent with the enumerated findings;

(b) recognize the right and need of watercourses to periodically carry more than the normal flow of water;

(c) provide state coordination and technical assistance to local units in management of floodway areas;

(d) coordinate federal, state, and local management activities for floodway areas;

(e) encourage local governmental units to manage flood-prone lands, including the adoption, enforcement, and administration of land use regulations; and

(f) provide the department of natural resources and conservation with authority necessary to carry out a comprehensive floodway management program for the state.

(2) Specifically, it is the purpose of parts 1 through 4 to:

(a) restrict or prohibit uses which are dangerous to health or safety of property in times of flood or cause increased flood heights or velocities;

(b) require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;

(c) develop and provide information to identify lands which are unsuited for certain development purposes because of flood hazard;

(d) distinguish between the land use regulations applied to the designated floodway and those applied to that portion of the designated floodplain not contained within the designated floodway;

(e) apply more restrictive land use regulations within the designated floodway;

(f) ensure that regulations and minimum standards adopted under parts 1 through 4, insofar as possible, balance the greatest public good with the least private injury.

History: En. Sec. 2, Ch. 393, L. 1971; amd. Sec. 194, Ch. 253, L. 1974; amd. Sec. 1, Ch. 271, L. 1974; R.C.M. 1947, 89-3502.

76-5-103. Definitions. As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Artificial obstruction" means any obstruction which is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodplain or floodway which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Designated floodplain" means a floodplain whose limits have been designated and established by order of the board.

(6) "Designated floodway" means a floodway whose limits have been designated and established by order of the board.

(7) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well-defined banks.

(8) "Establish" means construct, place, insert, or excavate.

(9) "Flood" means the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway.

(10) "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude which has a 1% chance of occurring in any given year.

(11) "Floodplain" means the area adjoining the watercourse or drainway which would be covered by the floodwater of a flood of 100-year frequency.

(12) "Floodway" means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

(13) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodplain or floodway by a nonhuman cause.

(14) "Owner" means any person who has dominion over, control of, or title to an obstruction.

(15) "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.

(16) "Responsible political subdivision" means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.

(17) "Watercourse" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks; provided that it shall, upon order of the board, also include any particular depression which would not otherwise be within the definition of watercourse.

History: **En. Sec. 3, Ch. 393, L. 1971; amd. Sec. 1, Ch. 294, L. 1973; amd. Sec. 195, Ch. 253, L. 1974; amd. Sec. 2, Ch. 271, L. 1974; R.C.M. 1947, 89-3503(part).**

76-5-104. Presumption that depression is watercourse. In the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse.

History: **En. Sec. 3, Ch. 393, L. 1971; amd. Sec. 1, Ch. 294, L. 1973; amd. Sec. 195, Ch. 253, L. 1974; amd. Sec. 2, Ch. 271, L. 1974; R.C.M. 1947, 89-3503(part).**

76-5-105. Authority to enter and investigate lands or waters. The department or the responsible political subdivision may make reasonable entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by parts 1 through 4 of this chapter. An investigation of a natural or artificial obstruction or nonconforming use shall be made by the department either on its own initiative, on the written request of three titleholders of land abutting the watercourse or drainway involved, or on the written request of a political subdivision.

History: En. Sec. 9, Ch. 393, L. 1971; amd. Sec. 201, Ch. 253, L. 1974; amd. Sec. 8, Ch. 271, L. 1974; R.C.M. 1947, 89-3509.

76-5-106. Exemption for small drainage area. Parts 1 through 4 of this chapter shall not extend to any obstruction in the floodplain or floodway of a watercourse or drainway where the drainage area above the same, either within or without the state, is less than 25 square miles in extent unless a particular watercourse or drainway is expressly declared to be within the coverage of parts 1 through 4 by order of the board.

History: En. Sec. 10, Ch. 393, L. 1971; amd. Sec. 9, Ch. 271, L. 1974; R.C.M. 1947, 89-3510.

76-5-107. Federal supremacy. Parts 1 through 4 do not interfere with the right of the United States to regulate interstate commerce or the navigable waters of the United States.

History: En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part).

76-5-108. Permit construed as added requirement. The granting of a permit under parts 1 through 4 of this chapter does not affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision, or of the United States but is an added requirement.

History: En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part).

76-5-109. Other legal remedies preserved — immunity. (1) The grant or denial of a permit does not have an effect on a remedy of a person at law or in equity.

(2) Where it is shown that there is a wrongful failure to comply with parts 1 through 4 of this chapter, there is a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of a person bringing suit.

(3) The use of any one of the remedies or powers given to the board or the department in parts 1 through 4 is not a bar to the exercise of any other remedy or power given by parts 1 through 4.

(4) An action for damages sustained because of injury caused by an obstruction for which a permit has been granted under parts 1 through 4 may not be brought against the state, the board, a member of the board, or the department.

History: (1), (2), (4)En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; Sec. 89-3514, R.C.M. 1947; (3)En. Sec. 15, Ch. 393, L. 1971; amd. Sec. 205, Ch. 253, L. 1974; Sec. 89-3515, R.C.M. 1947; R.C.M. 1947, 89-3514(part), 89-3515.

76-5-110. Penalties for violation. Any person who violates 76-5-401 through 76-5-404 shall be guilty of a misdemeanor and shall upon conviction thereof be fined not more than $100 or be imprisoned in the county jail for not more than 10 days or be both so fined and imprisoned. Each day's continuance of a violation shall be deemed a separate and distinct offense.

History: En. Sec. 13, Ch. 393, L. 1971; R.C.M. 1947, 89-3513.

Part 2

Role of State Agencies

76-5-201. Program for delineation of floodplains and floodways. (1) The department shall initiate a comprehensive program for the delineation of designated floodplains and designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data and may enter into arrangements with the United States geological survey, the United States army corps of engineers, or any other state or federal agency for such acquisition.

(2) Before the board establishes by order a designated floodplain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation shall include but not be limited to the following:

(a) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as considered appropriate;

(b) notifying local officials, including members of the county commission, city council, and planning board, of the progress of surveys, studies, and investigations and of proposed findings, along with information concerning data and methods employed in reaching such conclusions; and

(c) encouraging local dissemination of information concerning surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the department.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(1).

76-5-202. Designation of floodplains and floodways. (1) When sufficient data has been acquired by the department, the board shall establish, by order after a public hearing, the designated floodplain within which a political subdivision may establish land use regulation.

(2) When sufficient data has been acquired, the board shall establish, by order after a public hearing, the designated floodway within which a political subdivision may establish land use regulation.

(3) These designations shall be based upon reasonable hydrological certainty.

(4) The department shall record all designated floodplains or designated floodways established by the board in the office of the county clerk and recorder of each county in which those floodplains or floodways are found.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part).

76-5-203. Alteration of floodplains or floodways. The board may alter the floodplains or floodways at any later time, by order after a public hearing, if a reevaluation of the then available flood data warrants it.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part).

76-5-204. What constitutes notice. Notice of a hearing or order of the board establishing or altering the floodplains or floodways shall be given by publishing the notice once each week for 3 consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than 10 days prior to the date set for the hearing or the effective date of the order.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part).

76-5-205. Furnishing of material to local governments. (1) When the designated floodplain or the designated floodway has been established, the department shall furnish this data to officials of the political subdivision having jurisdiction over those areas, together with a map outlining the areas involved, a copy of parts 1 through 4 of this chapter, adopted rules of the board, and suggested minimum standards adopted by the board.

(2) These standards and rules shall reflect gradations in flood hazard based on criteria as outlined in 76-5-406. In adopting these standards and rules, the board shall consider local input from the affected political subdivisions.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part).

76-5-206. Powers and duties of department relative to obstructions. (1) Where an obstruction to a designated floodway established under 76-5-202 through 76-5-205 has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the department may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the department.

(2) Where, after investigation, notice, and hearing, an order has been issued by the board to the owner of an obstruction not exempt under 76-5-401 through 76-5-404 for its removal or repair and the order is not complied with within such reasonable time as may be prescribed or if the owner cannot be found or determined, the department may make or cause the removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law.

History: En. Sec. 8, Ch. 393, L. 1971; amd. Sec. 5, Ch. 294, L. 1973; amd. Sec. 200, Ch. 253, L. 974; amd. Sec. 7, Ch. 271, L. 1974; R.C.M. 1947, 89-3508.

76-5-207. Floodway obstruction removal fund. The state treasurer shall establish the floodway obstruction removal fund and credit to the fund for the removal of obstructions as provided in 76-5-206(1) such money specifically appropriated by the legislature. The department may allocate money from the floodway obstruction removal fund for purposes provided in 76-5-206(1).

History: En. Sec. 12, Ch. 393, L. 1971; amd. Sec. 203, Ch. 253, L. 1974; R.C.M. 1947, 89-3512.

76-5-208. Orders and rules. (1) The board may adopt such orders and rules as are necessary to implement parts 1 through 4 of this chapter. All orders and rules adopted by the board shall be on file at the offices of the department and in the office of the county clerk and recorder of each county affected by the order or rule.

(2) If an order is issued to the owner of an artificial obstruction or nonconforming use not exempt under 76-5-401 through 76-5-404 for its removal or repair, the order shall not become effective less than 10 days after a hearing is held relating to the order.

(3) In addition to any requirement imposed by 76-5-202 through 76-5-205, where an order is issued which affects with particularity the land adjacent to a watercourse or drainway, notice of the contents of the order and of any required hearing shall be mailed by the department to the titleholder of the land not less than 10 days before the effective date of the order or, if there is a required hearing, to the titleholder of the land and to the owner of the artificial obstruction or nonconforming use not less than 10 days before the date of the hearing. However, the notice need not be given to the owner of the artificial obstruction or nonconforming use for an order issued pursuant to 76-5-206(2) if the owner cannot be found or determined.

History: En. Sec. 11, Ch. 393, L. 1971; amd. Sec. 202, Ch. 253, L. 1974; amd. Sec. 10, Ch. 271, L. 1974; R.C.M. 1947, 89-3511(part).

76-5-209. Appeal from board order. (1) A person aggrieved by any order of the board issued under parts 1 through 4 of this chapter may appeal from the order to a court of competent jurisdiction within 30 days after its effective date. Service of notice of the appeal shall be made upon the department.

(2) If an appeal is taken, enforcement of the order shall be stayed pending the outcome of the appeal.

History: En. Sec. 11, Ch. 393, L. 1971; amd. Sec. 202, Ch. 253, L. 1974; amd. Sec. 10, Ch. 271, L. 1974; R.C.M. 1947, 89-3511(part).

Part 3

Role of Local Government

76-5-301. Land use regulations. (1) Upon transmittal of the floodplain information to officials of a political subdivision, the political subdivision has 6 months from the date of transmittal to adopt land use regulations which meet or exceed the minimum standards of the board.

(2) If within the 6-month period the political subdivision has failed to adopt the land use regulations, the department shall enforce the minimum standards within the designated floodplain or the designated floodway as established by the board under 76-5-202 through 76-5-205, and no artificial obstruction or nonconforming use may be established by any person within the designated floodplain or the designated floodway unless specifically authorized by the board.

(3) A political subdivision which has failed to adopt land use regulations which meet or exceed the minimum standards of the board within the 6-month period may subsequently adopt such regulations, and if approved by the board, they shall be effective within the designated floodplain or floodway and administered and enforced by the political subdivision.

(4) When necessary for compliance with federal flood insurance requirements, the board may shorten the 6-month period upon notification to the

political subdivision and publication of a notice thereof in a newspaper of general circulation in the affected area once a week for 3 consecutive weeks.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(3) thru (5).

76-5-302. Substitution of local control for state permit system. (1) If a political subdivision enacts, in harmony with the purposes of parts 1 through 4 of this chapter, permit issuance ordinances, regulations, or resolutions and land use ordinances, regulations, or resolutions which meet or exceed the minimum standards of the board and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the board, no permit from the department is required.

(2) However, if the board determines that there is a failure by a political subdivision to comply with the intent, purposes, and provisions of parts 1 through 4 and the minimum standards adopted thereunder, the powers of the political subdivision may be suspended after hearing and the minimum standards adopted by the board shall be enforced by the department until such time as the board determines that the political subdivision will comply.

History: En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part).

Part 4

Use of Floodplains and Floodways

76-5-401. Permissible open-space uses. The following open-space uses shall be permitted within the designated floodway to the extent that they are not prohibited by any other ordinance or statute and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment:

(1) agricultural uses;

(2) industrial-commercial uses such as loading areas, parking areas, or emergency landing strips;

(3) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, or hiking and horseback riding trails;

(4) forestry, including processing of forest products with portable equipment;

(5) residential uses such as lawns, gardens, parking areas, and play areas;

(6) excavations subject to the issuance of a permit under 76-5-405 and 76-5-406.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(2).

76-5-402. Permissible uses within floodplain but outside of floodway. Permits shall be granted for the following uses within that portion of the floodplain not contained within the designated floodway to the extent that they are not prohibited by any other ordinance, regulation, or statute:

(1) any use permitted in the designated floodway;

(2) structures, including but not limited to residential, commercial, and industrial structures, provided that:

(a) such structures meet the minimum standards adopted by the board;

(b) residential structures are constructed on fill such that the lowest floor elevation (including basements) is 2 feet above the 100-year flood elevation;

(c) commercial and industrial structures are either constructed on fill as specified in subsection (b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. Such floodproofing shall be in accordance with the minimum standards adopted by the board.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(3).

76-5-403. Prohibited uses within floodway. The following nonconforming uses shall be prohibited within the designated floodway:

(1) a building for living purposes or place of assembly or permanent use by human beings;

(2) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway;

(3) the construction or permanent storage of an object subject to flotation or movement during flood level periods.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(4).

76-5-404. Artificial obstructions and nonconforming uses. (1) An artificial obstruction or nonconforming use in a designated floodplain or designated floodway enforced under 76-5-301 (1) and (2) and not exempt under subsections (2) or (3) of this section or 76-5-401 through 76-5-403 is a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the department or the responsible political subdivision.

(2) It is unlawful for a person to establish an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway without a permit from the department or the responsible political subdivision.

(3) (a) Parts 1 through 4 of this chapter do not affect any existing artificial obstruction or nonconforming use established in the designated floodplain or designated floodway before the land use regulations adopted by the political subdivision are effective or before the board has enforced a designated floodplain or a designated floodway under 76-5-301 (1) and (2).

(b) However, a person may not make nor may an owner allow alterations of an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway whether the obstruction proposed for alteration was located in the floodplain or floodway before or after July 1, 1971, except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction is not an alteration.

History: En. Secs. 5, 6, Ch. 393, L. 1971; amd. Secs. 3, 4, Ch. 294, L. 1973; amd. Secs. 197, 198, Ch. 253, L. 1974; amd. Secs. 4, 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3505, 89-3506(1).

76-5-405. Variance for obstruction or nonconforming use. (1) The department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses which would otherwise violate 76-5-401 through 76-5-404. The application for the permit shall be submitted to the department or the responsible political subdivision and contain such information as the department requires, including complete maps, plans, profiles, and specifications of the obstruction or use and watercourse or drainway.

(2) Permits for obstructions or uses to be established in the designated floodplain or designated floodway of watercourses must be specifically approved or denied within a reasonable time by the department or the responsible political subdivision. Permits for obstructions or uses in the designated floodplains or designated floodways shall be conclusively deemed to have been granted 60 days after the receipt of the application by the department or the responsible political subdivision or after such time as the board or the responsible political subdivision shall specify, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy of each permit granted pursuant to this section and 76-5-406.

(3) An application for a permit shall be accompanied by a nonrefundable application fee of $10 which the state treasurer shall credit to the floodway obstruction removal fund.

(4) The department or the responsible political subdivision may make a part of the permit any reasonable conditions it may consider advisable. In order for the permit to continue to remain in force, the obstruction or use must be maintained so as to comply with the conditions and specifications of the permit.

History: **En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. 1947, 89-3507(part).**

76-5-406. Criteria to be considered in connection with variance request. In passing upon the application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the board:

(1) the danger to life and property by water which may be backed up or diverted by the obstruction or use;

(2) the danger that the obstruction or use will be swept downstream to the injury of others;

(3) the availability of alternate locations;

(4) the construction or alteration of the obstruction or use in such a manner as to lessen the danger;

(5) the permanence of the obstruction or use;

(6) the anticipated development in the foreseeable future of the area which may be affected by the obstruction or use; and

(7) such other factors as are in harmony with the purpose of parts 1 through 4 of this chapter.

History: **En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. 1947, 89-3507(part).**

Parts 5 through 10 reserved

Part 11

Water Conservation and Flood Control Projects

76-5-1101. Water conservation and flood control projects authorized. (1) Cities, towns, or counties, through their councils, boards of county commissioners, or other governing body, are hereby empowered, either individually or jointly, to engage or participate in the establishment of water conservation and flood control projects within the limits of such city, town, or county:

(a) for the protection or reclamation of property situated therein from floods or high waters and to protect property therein from the effects of floodwater; and

(b) for the conservation, development, storage, distribution, drainage, and utilization of water for purposes beneficial to the district.

(2) Purposes beneficial to the district include but are not limited to industrial and municipal water supply, recreation and wildlife, irrigation, streamflow stabilization, household and domestic use, and pollution abatement whenever the establishment of such a water conservation and flood control system shall, in the judgment of the city council, board of county commissioners, or other governing body, be conducive to public convenience and welfare.

History: En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967; R.C.M. 1947, 89-3301(part).

76-5-1102. Types of projects. Such cities, towns, or counties in accordance with the provisions of this part, individually, jointly, or severally or in cooperation with the federal or state government or any department or agency thereof and with each other, may deepen, widen, straighten, alter, change, divert, or otherwise improve the watercourses within or without their limits by constructing levees, dikes, embankments, structures, impounding reservoirs, or conduits and improve, widen, and establish streets, alleys, and boulevards across and adjacent to the abandoned or new channel or conduit and provide for the payment of the cost and maintenance of such project or projects under the terms of this part.

History: En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967; R.C.M. 1947, 89-3301(part).

76-5-1103. Water conservation and flood control activities declared public purpose. Such water conservation and flood control activities and their establishment, construction, operation, and maintenance as authorized by this part are declared to be for the protection of the tax base of the city, town, or county; for the protection of public roads, lands, and improvements; for the protection of the public health, sanitation, and safety; and for improvement of the general welfare.

History: En. Sec. 2, Ch. 272, L. 1965; amd. Sec. 2, Ch. 284, L. 1967; R.C.M. 1947, 89-3302.

76-5-1104. Construction of part. (1) This part and each section thereof shall be construed as granting additional power without limiting the power already existing in cities, towns, and counties.

(2) The provisions of this part and the methods of organization of water conservation and flood control projects are hereby declared to be an alternative method to any other method proposed by any law now in existence or hereafter enacted for the creation of such projects, and it is hereby declared that no provision hereof shall be amended or repealed by implication or otherwise as being in conflict with any existing law or future enactment unless specifically so declared by the legislature.

History: (1)En. Sec. 13, Ch. 272, L. 1965; Sec. 89-3313, R.C.M. 1947; (2)En. Sec. 12, Ch. 284, L. 1967; Sec. 89-3314, R.C.M. 1947; R.C.M. 1947, 89-3313, 89-3314.

76-5-1105. Division of work into parts. Whenever any city, town, or county has begun a water conservation or flood control system, or both, under this part, the council, board, or other governing body shall have the power to divide the work into parts, sections, or districts; to omit parts of said work; and to contract for any part or section separately and proceed therewith the same as if the entire work or improvements were contracted for, done, or made.

History: En. Sec. 11, Ch. 272, L. 1965; amd. Sec. 11, Ch. 284, L. 1967; R.C.M. 1947, 89-3311.

76-5-1106. Requirements to change project boundaries. The boundaries of a project once established shall not be extended without the vote of a majority of the electors residing in the area proposed to be annexed. Such electors are to be determined, and such election is to be held in accordance with the provisions of 76-5-1117.

History: En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967; R.C.M. 1947, 89-3301(part).

76-5-1107. Direction and construction responsibility of state or federal government — local role. This part contemplates that the actual direction of the project and the doing of the work in connection therewith is assumed by either the state or the federal government and the city, town, or county provides and assumes the cost of necessary right-of-way over and above such contributions in that regard as the federal government may choose to make. Under such limitation, all appropriate portions of this part shall apply.

History: En. Sec. 6, Ch. 272, L. 1965; amd. Sec. 5, Ch. 284, L. 1967; R.C.M. 1947, 89-3306.

76-5-1108. Acquisition of property. (1) Cities, towns, and counties may acquire by gift, purchase, or condemnation and appropriation private property within the limits of the project, including the right to cross railroad right-of-way and property and highway right-of-way and property, so as not to impair the previous public use, as may be necessary to carry into effect the provisions of this part and to provide an outlet for the watercourses, either natural or artificial, which may be deepened, widened, straightened, altered, changed, diverted, or otherwise improved under the provisions of this part.

(2) All provisions of the laws of Montana relating to the condemnation of lands for public purposes shall apply to the provisions thereof insofar as applicable.

History: En. Sec. 3, Ch. 272, L. 1965; amd. Sec. 3, Ch. 284, L. 1967; R.C.M. 1947, 89-3303.

76-5-1109. Contracts for use of railroads and highways. A city, town, or county may contract with a railroad company or with the department of highways for the use of railroad or highway rights-of-way and embankments and other railroad or highway property which can be utilized by the city, town, or county for the purpose of water conservation or flood control or protection as part of its water conservation or flood control system, or both, for a period not exceeding 99 years.

History: En. Sec. 10, Ch. 272, L. 1965; amd. Sec. 10, Ch. 284, L. 1967; amd. Sec. 207, Ch. 316, L. 1974; R.C.M. 1947, 89-3310.

76-5-1110. Cooperation with governmental, public, and private agencies. (1) Cities, towns, and counties may in accordance with the provisions of this part:

(a) accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding the construction and maintenance of water conservation and flood control projects; and

(b) cooperate and contract with the state or federal government or any department or agency thereof in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, and use of water.

(2) Cities, towns, and counties may also enter into agreement with the federal government to maintain levees, dikes, or other construction and to do all other acts required by the federal government in maintaining the work when completed.

History: En. Secs. 4, 7, Ch. 272, L. 1965; amd. Secs. 4, 6, Ch. 284, L. 1967; R.C.M. 1947, 89-3304, 89-3307(part).

76-5-1111. Apportionment of costs. (1) The cost of all right-of-way acquired by purchase or condemnation together with any other property rights which may be required in furtherance of such projects, may be borne by the city, town, or county.

(2) The work of actual construction and the cost thereof may be borne by the federal government.

History: En. Sec. 5, Ch. 272, L. 1965; R.C.M. 1947, 89-3305.

76-5-1112. Sources of funds for cost of acquiring right-of-way and other costs. (1) The council, board, or governing body shall have power to allocate a portion of the street or road fund, as the case may be, for the purpose of acquiring right-of-way or the operation and maintenance of completed projects.

(2) Cities, towns, and counties in furtherance of such water conservation and flood control projects may accept contributions to enable them to pay for necessary right-of-way.

(3) The council, board of county commissioners, or other governing body shall also have the authority to receive and accept appropriations and contributions from any source of either money or property or other things of value to be held, used, and applied for the purposes provided in this part.

History: (1)En. Sec. 8, Ch. 272, L. 1965; amd. Sec. 7, Ch. 284, L. 1967; Sec. 89-3308, R.C.M. 1947; (2)En. Sec. 7, Ch. 272, L. 1965; amd. Sec. 6, Ch. 284, L. 1967; Sec. 89-3307, R.C.M. 1947; (3)En. Sec. 9, Ch. 284, L. 1967; Sec. 89-3309.1, R.C.M. 1947; R.C.M. 1947, 89-3307(part), 89-3308, 89-3309.1(part).

76-5-1113. Special assessments for operation and maintenance authorized. (1) Any city, town, or county that shall establish a water conservation or flood control system, or both, pursuant to this part may for the purpose of providing funds for the operation and maintenance thereof levy an annual special assessment against all real property in the area benefiting from such system.

(2) Such special assessments for the operation and maintenance of any system authorized by this part shall be levied as are other special improvement levies as required by law.

History: En. Sec. 9, Ch. 272, L. 1965; amd. Sec. 8, Ch. 284, L. 1967; R.C.M. 1947, 89-3309(part).

76-5-1114. Determination of assessment. (1) The special assessment shall be:

(a) levied against each lot or parcel of land in the benefited area for that portion of the money required which its area bears to the total area of all of the lands to be assessed; or

(b) at the option of the governing body of the city, town, or county, as the case may be, based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land, exclusive of improvements thereon, within said benefited area; in which case each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.

(2) However, where the benefited area lies in more than one county or lies both within a county and also a city or town, the same method of assessment shall be used for each governing body.

History: **En. Sec. 9, Ch. 272, L. 1965; amd. Sec. 8, Ch. 284, L. 1967; R.C.M. 1947, 89-3309(part).**

76-5-1115. Fees and charges authorized. Cities, towns, and counties may for the purpose of providing funds for the operation and maintenance of completed projects fix, maintain, and collect fees, rents, tolls, and other charges for services rendered or facilities provided.

History: **En. Sec. 9, Ch. 284, L. 1967; R.C.M. 1947, 89-3309.1(part).**

76-5-1116. Determination of fees and charges. (1) In fixing such rate, fee, toll, or rent for water furnished for household use, domestic use, irrigation use, industrial use, and municipal use and for water used for streamflow stabilization, the governing body shall charge a fee sufficient to pay the proportionate share of the repairs, maintenance, and operating expenses as such use bears in economic value to the total economic value of the total use of said facilities of the project or projects. The economic value is to be determined by the governing body.

(2) For the benefits received by areas within the boundaries of the project or projects for flood prevention, flood control, and pollution abatement, the governing body shall determine a reasonable valuation or charge, which valuation or charge shall be certified by them to the county commissioners prior to the time general taxes are levied and assessed. It shall be the obligation of the county commissioners to levy a special assessment as provided for in 76-5-1113 and 76-5-1114 against such area or areas sufficient to provide revenues for the repairs, maintenance, and operating expenses of the project.

(3) For recreation use the governing body shall first determine the share of the costs of operation, repairs, and depreciation to be charged against such uses and from this figure shall subtract the estimated amount of fees and tolls collected for such uses. The deficiency, if any, shall be certified to the county commissioners in the same way as the charges for flood prevention, flood control, etc., and special assessments shall be levied by the county commissioners in the manner set out herein.

History: **En. Sec. 9, Ch. 284, L. 1967; R.C.M. 1947, 89-3309.1(part).**

76-5-1117. Bonds authorized — procedure. Cities, towns, and counties are authorized to contract indebtedness and to issue special improvement district or rural improvement district bonds to provide funds for the payment of the cost of improvements contemplated by this part by following the procedures established for the issuance of such bonds under the provisions of Title 7, chapter 12, part 42, as to cities and towns and Title 7, chapter 12, part 21, as to counties. Payment and security for the bonds shall be provided by following the following procedures:

(1) Tax assessments for the payment of the bonds shall be levied in accordance with Title 7, chapter 12, parts 41 and 42 and Title 7, chapter 12, part 21 as to cities and counties, respectively.

(2) A revolving fund, to be pledged for the security of the bonds, must be established pursuant to the provisions of Title 7, chapter 12, part 42, as to cities and towns, and Title 7, chapter 12, part 21, as to counties, by the governing body authorizing the issuance of the bonds.

History: En. Sec. 12, Ch. 272, L. 1965; amd. Sec. 1, Ch. 239, L. 1971; R.C.M. 1947, 89-3312; amd. Sec. 15, Ch. 266, L. 1979.

Compiler's Comments

Effective date. Sec. 25, Ch. 266, L. 1979, provided: "This act is effective on passage and approval." Approved March 26, 1979.

CHAPTER 6

OPEN SPACES

Part 1 — General Provisions

Section

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Part 2 — Conservation Easements

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Part 1

General Provisions

76-6-101. Short title. This chapter may be cited as the "Open-Space Land and Voluntary Conservation Easement Act".

History: En. Sec. 1, Ch. 337, L. 1969; amd. Sec. 1, Ch. 489, L. 1975; R.C.M. 1947, 62-601.

76-6-102. Findings and policy. The legislature finds that:

(1) the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments;

(2) the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living;

(3) this population spread and its attendant development are disrupting and altering the remaining natural areas, biotic communities, and geological and geographical formations and thereby providing the potential for the destruction of scientific, educational, aesthetic, and ecological values;

(4) the present and future rapid population spread throughout the state of Montana into its open spaces is creating serious problems of lack of open space and overcrowding of the land;

(5) to lessen congestion and to preserve natural, ecological, geographical, and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic, and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographical elements in their natural state;

(6) the acquisition or designation of interests and rights in real property by certain qualifying private organizations and by public bodies to provide or preserve open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state;

(7) the exercise of authority to acquire or designate interests and rights in real property to provide or preserve open-space land and the expenditure of public funds for these purposes would be for a public purpose; and

(8) the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest.

History: En. Sec. 2, Ch. 337, L. 1969; amd. Sec. 2, Ch. 489, L. 1975; R.C.M. 1947, 62-602(part).

76-6-103. Purposes. In accordance with the findings in 76-6-102, the legislature states that the purposes of this chapter are to:

(1) authorize and enable public bodies and certain qualifying private organizations voluntarily to provide for the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest;

(2) provide for the preservation of other significant open-space land anywhere in the state either in perpetuity or for a term of years; and

(3) encourage private participation in such a program by establishing the policy to be utilized in determining the property tax to be levied upon the real property which is subject to the provisions of this chapter.

History: En. Sec. 2, Ch. 337, L. 1969; amd. Sec. 2, Ch. 489, L. 1975; R.C.M. 1947, 62-602(part).

76-6-104. Definitions. The following terms whenever used or referred to in this chapter shall have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Comprehensive planning" means planning for development and shall include:

(a) preparation of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for such development as a guide for long-range development;

(b) programming and financing plans for capital improvements;

(c) coordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and

(d) preparation of regulatory and administrative measures in support of the foregoing.

(2) "Conservation easement" means an easement or restriction, running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction.

(3) "Open-space land" means any land which is provided or preserved for:

(a) park or recreational purposes;

(b) conservation of land or other natural resources;

(c) historic or scenic purposes; or

(d) assisting in the shaping of the character, direction, and timing of community development.

(4) "Public body" means the state, counties, cities, towns, and other municipalities.

(5) "Qualified private organization" means a private organization:

(a) competent to own interests in real property;

(b) which qualifies and holds a general tax exemption under the federal Internal Revenue Code, section 501(c); and

(c) whose organizational purposes are designed to further the purposes of this chapter.

(6) "Urban area" means any area which is urban in character, including surrounding areas which form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

History: En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part).

76-6-105. Construction of chapter. (1) Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

(2) This subsection shall not be construed to imply that any easement, covenant, condition, or restriction which does not have the benefit of this chapter shall on account of any provisions hereof be unenforceable. Nothing in this chapter shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain, or otherwise and to use land for public purposes.

History: (1)En. Sec. 9, Ch. 337, L. 1969; Sec. 62-609, R.C.M. 1947; (2)En. 62-618 by Sec. 14, Ch. 489, L. 1975; Sec. 62-618, R.C.M. 1947; R.C.M. 1947, 62-609(part), 62-618.

76-6-106. Acquisition and designation of real property by public body. To carry out the purposes of this chapter, any public body may:

(1) acquire by purchase, gift, devise, bequest, or grant title to or any interests or rights in real property, including land and water, that will provide a means for the preservation or provision of significant open-space land or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest, or both;

(2) designate any real property, including land and water, in which it has an interest to be retained and used for the preservation and provision of significant open-space land or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interests, or both.

History: En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975; R.C.M. 1947, 62-604(part).

76-6-107. Conversion or diversion of open-space land. (1) No open-space land, the title to or interest or right in which has been acquired under this chapter, shall be converted or diverted from open-space land use unless the conversion or diversion is:

(a) necessary to the public interest;

(b) not in conflict with the program of comprehensive planning for the area; and

(c) permitted by the conditions imposed at the time of the creation of the conservation easement.

(2) Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as open-space land shall be substituted within a reasonable period not exceeding 1 year for any real property converted or diverted from open-space land use. Property substituted is subject to the provisions of this chapter.

History: En. Sec. 5, Ch. 337, L. 1969; amd. Sec. 5, Ch. 489, L. 1975; R.C.M. 1947, 62-605(1).

76-6-108. Conveyance or lease of open-space lands. A grantee may convey or lease any real property it has acquired or which has been designated for the purposes of this chapter. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land and which are consistent with the express terms and conditions of the grant unless the property is to be converted or diverted from open-space land use in accordance with the provisions of 76-6-107.

History: En. Sec. 5, Ch. 337, L. 1969; amd. Sec. 5, Ch. 489, L. 1975; R.C.M. 1947, 62-605(2).

76-6-109. Powers of public bodies. (1) A public body shall have all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:

(a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter;

(b) to advance or accept advances of public funds;

(c) to apply for and accept and utilize grants and any other assistance from the federal government and any other public or private sources, to give such security as may be required, to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government such conditions imposed pursuant to federal laws as the public body may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter;

(d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter;

(e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land;

(f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(g) to demolish or dispose of any structures or facilities which may be detrimental to or inconsistent with the use of real property as open-space land; and

(h) to exercise any or all of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are so authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action.

(2) For the purposes of this chapter, the state or a city, town, other municipality, or county may:

(a) appropriate funds;

(b) levy taxes and assessments according to existing codes and statutes not to exceed 1 mill;

(c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state; and

(d) exercise its powers under this chapter through a board or commission or through such office or officers as its governing body by resolution determines or as the governor determines in the case of the state.

History: En. Sec. 6, Ch. 337, L. 1969; R.C.M. 1947, 62-606.

76-6-110. Authorization and funding for planning commission. (1) The state, counties, cities, towns, or other municipalities in an urban area, acting jointly or in cooperation, are authorized to perform comprehensive planning for the urban area and to establish and maintain a planning commission for this purpose and related planning activities.

(2) Funds may be appropriated and made available for the comprehensive planning. Financial or other assistance from the federal government and any

other public or private sources may be accepted and utilized for the planning.

History: En. Sec. 7, Ch. 337, L. 1969; R.C.M. 1947, 62-607.

Part 2

Conservation Easements

76-6-201. Conservation easements in general. (1) Where a public body acquires under this chapter an interest in land less than fee, this acquisition shall be by conservation easement.

(2) A conservation easement may be applied to urban or nonurban land.

History: En. Secs. 3, 4, Ch. 337, L. 1969; amd. Secs. 3, 4, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part), 62-604(part).

76-6-202. Duration of conservation easements. Conservation easements may be granted either in perpetuity or for a term of years. If granted for a term of years, that term may not be less than 15 years. An easement granted for a term of years may be renewed for a term of 15 or more years upon the execution of a new granting instrument by the parties.

History: En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part).

76-6-203. Types of permissible easements. Easements or restrictions under this chapter may prohibit or limit any or all of the following:

(1) structures—construction or placing of buildings, camping trailers, housetrailers, mobile homes, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

(2) landfill—dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(3) vegetation—removal or destruction of trees, shrubs, or other vegetation;

(4) loam, gravel, etc.—excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;

(5) surface use—surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition;

(6) acts detrimental to conservation—activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation;

(7) subdivision of land—subdivision of land as defined in 76-3-103, 76-3-104, and 76-3-202;

(8) other acts—other acts or uses detrimental to such retention of land or water areas in their existing conditions.

History: En. 62-610 by Sec. 7, Ch. 489, L. 1975; R.C.M. 1947, 62-610; amd. Sec. 16, Ch. 266, L. 1979.

76-6-204. Acquisition of conservation easements by qualified private organizations. Any qualified private organization may acquire by a conservation easement, by purchase, or by gift, devise, bequest, or grant title to any interest or interests in rights in real property, including land and water, that will provide a means for the preservation or provision of permanent significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest.

History: **En. 62-611 by Sec. 8, Ch. 489, L. 1975; R.C.M. 1947, 62-611.**

76-6-205. Assignability of easements. For the purposes of this chapter, all conservation easements shall be assignable unless the instrument of conveyance or ownership expressly stipulates otherwise. No conservation easement shall be unenforceable on account of the benefit being assignable or being assigned to any other government body or private organization unless such assignment has violated the express terms of the instrument of conveyance or ownership. The assignees must be qualified under the terms of this chapter to hold a conservation easement.

History: **En. 62-613 by Sec. 10, Ch. 489, L. 1975; R.C.M. 1947, 62-613.**

76-6-206. Review by local planning authority. In order to minimize conflict with local comprehensive planning, all conservation easements shall be subject to review prior to recording by the appropriate local planning authority for the county within which the land lies. It shall be the responsibility of the entity acquiring the conservation easement to present the proposed conveyance of the conservation easement to the appropriate local planning authority. The local planning authority shall have 90 days from receipt of the proposed conveyance within which to review and to comment upon the relationship of the proposed conveyance to comprehensive planning for the area. Such comments will not be binding on the proposed grantor or grantee but shall be merely advisory in nature. The proposed conveyance may be recorded after comments have been received from the local planning authority or the local planning authority has indicated in writing it will have no comments or 90 days have elapsed, whichever occurs first.

History: **En. 62-614 by Sec. 11, Ch. 489, L. 1975; R.C.M. 1947, 62-614.**

76-6-207. Recording and description of easement. (1) All conservation easements shall be duly recorded in the county where the land lies so as to effect their titles in the manner of other conveyances of interest in land and shall describe the land subject to said conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries.

(2) The county clerk and recorder shall upon recording cause a copy of the conservation easement to be placed in a separate file within the office of the county clerk and recorder and shall cause a copy of the conservation easement to be mailed to the department of revenue.

History: **En. 62-615 by Sec. 12, Ch. 489, L. 1975; R.C.M. 1947, 62-615.**

76-6-208. Taxation of property subject to conservation easement. (1) Assessments made for taxation on property subject to a conservation easement either in perpetuity or for a term of years, where a public body or a qualifying private organization holds the conservation easement, shall be determined on the basis of the restricted purposes for which the property may be used. The minimum assessed value for land subject to an easement conveyed under this chapter may not be less than the actual assessed value of such land in calendar year 1973. Any land subject to such easement may not be classified into a class affording a lesser assessed valuation solely by reason of the creation of the easement. The value of the interest held by a public body or qualifying private organization shall be exempt from property taxation.

(2) Expiration of an easement granted for a term of years shall not result in a reassessment of the land for property tax purposes if the easement is renewed and the granting instrument reflecting the renewed easement is executed and properly filed not later than 15 days after the date of expiration.

History: En. Sec. 8, Ch. 337, L. 1969; amd. Sec. 6, Ch. 489, L. 1975; R.C.M. 1947, 62-608.

76-6-209. Easements to run with the land. The provisions of 70-17-202 and 70-17-203(1) and (2) notwithstanding, for the purposes of this chapter, all conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership.

History: En. 62-612 by Sec. 9, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part).

76-6-210. Enforcement. (1) Conservation easements may be enforced by injunction or proceedings in equity. Representatives of the grantee of the conservation easement shall be entitled to enter the land in a reasonable manner and at reasonable times to assure compliance.

(2) No conservation easement shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of such conservation easement not being an appurtenant easement or because such easement is an easement in gross.

History: En. 62-612, 62-616 by Secs. 9, 13, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part), 62-616.

76-6-211. Who may enforce easement. (1) The owner of any estate in a dominant tenement or the occupant of such tenement may maintain an action for the enforcement of an easement attached thereto.

(2) Public bodies holding conservation easements shall enforce the provisions of these easements.

History: (1)En. Sec. 1258, Civ. C. 1895; re-en. Sec. 4515, Rev. C. 1907; re-en. Sec. 6757, R.C.M. 1921; Cal. Civ. C. Sec. 809; Field Civ. C. Sec. 253; re-en. Sec. 6757, R.C.M. 1935; Sec. 67-609, R.C.M. 1947; redes. 62-617 by Sec. 15, Ch. 489, L. 1975; Sec. 62-617, R.C.M. 1947; (2)En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975; Sec. 62-604, R.C.M. 1947; R.C.M. 1947, 62-604(part), 62-617.

CHAPTERS 7 THROUGH 10

RESERVED

CHAPTER 11

NATURAL RESOURCES IN GENERAL

Part 1 — Protection From Fire

Section
76-11-101. Protection of natural resources from fire.
76-11-102. Cooperative agreements with owners and lessees of land for fire protection and conservation.

Part 2 — Soil Survey and Mapping Program

76-11-201. Short title.
76-11-202. Purpose.
76-11-203. Direction to state agencies.
76-11-204. Professional and technical assistance.

Part 1

Protection From Fire

76-11-101. Protection of natural resources from fire. The department of natural resources and conservation, under such rules as the state board of land commissioners may provide, shall protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for such purpose, in emergencies, may employ men and incur other expenses when necessary.

History: En. Sec. 14, Ch. 147, L. 1909; re-en. Sec. 1836, R.C.M. 1921; re-en. Sec. 1836, R.C.M. 1935; amd. Sec. 1, Ch. 220, L. 1955; amd. Sec. 105, Ch. 253, L. 1974; amd. Sec. 18, Ch. 397, L. 1977; R.C.M. 1947, 81-1415.

76-11-102. Cooperative agreements with owners and lessees of land for fire protection and conservation. (1) For the purpose of more adequately promoting and facilitating the cooperation, financial and otherwise, between the state and all of the public and private agencies or individuals therein, the department of natural resources and conservation may cooperate with owners or lessees of farm, range, forest, watershed, or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural crops or natural resources existing or growing thereon and also in the conservation and perpetuation of such lands and resources, including the prevention of soil erosion and the regulation of stream flow.

(2) The state treasurer is hereby authorized to receive money that may be appropriated or allotted for the purposes named in subsection (1) by the state, counties, municipalities, the United States government or any department thereof, or other organization or individual.

History: (1)En. Sec. 9, Ch. 179, L. 1925; re-en. Sec. 1830.9, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1947; amd. Sec. 101, Ch. 253, L. 1974; Sec. 81-1409, R.C.M. 1947; (2)En. Sec. 10, Ch. 179, L. 1925; re-en. Sec. 1830.10, R.C.M. 1935; amd. Sec. 216, Ch. 147, L. 1963; Sec. 81-1410, R.C.M. 1947; R.C.M. 1947, 81-1409, 81-1410.

Part 2

Soil Survey and Mapping Program

76-11-201. Short title. This part may be cited as the "Montana Soil Survey Act".

History: En. Sec. 1, Ch. 358, L. 1979.

Compiler's Comments

Severability. Sec. 6, Ch. 358, L. 1979, was a severability clause.

76-11-202. Purpose. (1) The legislature finds that the soils of the state of Montana are one of its most basic and precious natural resources and that detailed knowledge of soil capabilities and adaptability is essential for:

(a) making wise land use decisions;

(b) preparing plans for cities, towns, counties, planning boards, farmers, foresters, industrial developers, and residential developers;

(c) locating and designing buildings, highways, reservoirs, and recreation areas; and

(d) protecting our forest, range, and agricultural lands.

(2) Pursuant to these findings, it is the intention of the legislature to accelerate the survey and mapping of the state's soil resources, to set a goal of completing the soil survey and mapping program.

History: En. Sec. 2, Ch. 358, L. 1979.

76-11-203. Direction to state agencies. (1) The department of natural resources and conservation shall develop a plan for completing the soil survey and mapping program in cooperation with and according to the standards set forth by the national cooperative soil survey program and the Montana state agricultural experiment station.

(2) The soil survey plan shall identify all projected local participation, all funds available from state and federal agencies, including planning grants, and any and all additional equipment, personnel, facilities, supplies, maps and such other material necessary to complete the soil survey and mapping program.

(3) The soil survey plan shall determine geographic areas without modern soil survey information and shall establish in cooperation with the national cooperative soil survey program priorities for completing soil surveys based upon the needs of the geographic areas.

(4) The department of natural resources and conservation shall oversee the plan for completing the soil survey and mapping program and shall report annually on its progress to the governor and legislature not later than January 1 of each year, beginning in 1981.

History: En. Sec. 3, Ch. 358, L. 1979.

76-11-204. Professional and technical assistance. The department of natural resources and conservation, with the advice and recommendations of the advisory council provided for in 2-15-3306, may use such professional, technical, and legal counsel and assistance as it determines necessary to develop and implement a soil survey plan to accelerate the completion of the national cooperative soil survey and mapping program in Montana.

History: En. Sec. 5, Ch. 358, L. 1979.

CHAPTER 12

WILD AND SCENIC RESOURCES

Part 1 — Natural Areas

Section
76-12-101. Short title.
76-12-102. Legislative findings.

76-12-103. Statement of policy.
76-12-104. Definitions.
76-12-105. Identification of natural areas.
76-12-106. Recommendations to board.
76-12-107. Methods of bringing land under part.
76-12-108. Acquisition of lands.
76-12-109. Report to legislature.
76-12-110. Restriction on condemnation or development of natural areas.
76-12-111. Continuation of existing uses.
76-12-112. Administrative rules and hearing requirements.
76-12-113. Advisory council.
76-12-114. Council recommendations to board.
76-12-115. Consultation with interested parties.
76-12-116. Files and proceedings open to public.
76-12-117. Application of more restrictive provisions.

Part 1

Natural Areas

76-12-101. Short title. This part shall be known and may be cited as the "Montana Natural Areas Act of 1974".

History: **En. 81-2701 by Sec. 1, Ch. 254, L. 1974; R.C.M. 1947, 81-2701.**

76-12-102. Legislative findings. The legislature finds that:

(1) in the expanses of Montana there are natural areas possessing significant scenic, educational, scientific, biological, and/or geological values or areas possessing these characteristics to a degree promising their restoration to a natural state;

(2) since the development of these areas is an irreversible commitment of a finite and diminishing resource of fundamental importance, the remaining areas should be preserved for the benefit of this and future generations; and

(3) currently there are no regulations promulgated by the state or local governments to insure adequate protection for natural areas.

History: **En. 81-2702 by Sec. 2, Ch. 254, L. 1974; R.C.M. 1947, 81-2702(part).**

76-12-103. Statement of policy. (1) It is the intention of the legislature to establish a system for the protection of natural or potentially natural areas in order to preserve their natural ecosystem integrity in perpetuity.

(2) In this connection, the legislature recognizes the fact that the school trust lands are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of the state; that it is the duty of the board of land commissioners to administer this trust so as to secure the largest measure of legitimate and reasonable advantage to the state; and hereby declares the preservation of natural areas, whether trust or other lands, for the enjoyment and inspiration of future generations to be an object worthy of legislative action helpful to the well-being of the people of the state and also declares that the preservation of natural areas on state trust land has sufficient value to present and future education to meet the state's obligation for the disposition and utilization of trust lands as specified in the Enabling Act.

History: **En. 81-2702 by Sec. 2, Ch. 254, L. 1974; R.C.M. 1947, 81-2702(part).**

76-12-104. Definitions. (1) "Board" means the board of land commissioners.

(2) "Council" means the natural areas advisory council created by this part.

(3) "Department" means the department of state lands.

(4) "Natural area" means an area of land which must generally appear to have been affected primarily by the forces of nature with the visual aspects of human intrusion not dominant and also must have one or more of the following characteristics:

(a) an outstanding mixture or variety of vegetation, wildlife, water resource, landscape, and scenic values;

(b) an important or rare ecological or geological feature or other rare or significant natural feature worthy of preservation for scientific, educational, or ecological purposes.

History: En. 81-2703 by Sec. 3, Ch. 254, L. 1974; R.C.M. 1947, 81-2703.

76-12-105. Identification of natural areas. (1) The department shall establish and utilize procedures to identify the existing or potentially natural areas on lands under its jurisdiction and shall collect information on potential natural areas on private, county, and other state land.

(2) The department of natural resources shall cooperate with the department by reporting potential natural areas on state timber lands.

History: En. 81-2705 by Sec. 5, Ch. 254, L. 1974; R.C.M. 1947, 81-2705(part).

76-12-106. Recommendations to board. The department shall make recommendations to the board for designation of natural areas on state lands controlled by the board and for acquisition of interests in other lands for the preservation of natural areas.

History: En. 81-2705 by Sec. 5, Ch. 254, L. 1974; R.C.M. 1947, 81-2705(part).

76-12-107. Methods of bringing land under part. A natural area, as defined in 76-12-104, may become subject to the provisions of this part in any of the following ways:

(1) designation by the board on lands controlled by the board;

(2) designation by the legislature on lands owned by the state of Montana;

(3) acquisition by the board by purchase with consent of the property owner of sufficient interests in private property to protect the natural area; provided, however, that transfer of surface property or development rights shall not alter the rights attending the subsurface estate if owned by another party;

(4) gift accepted by the board;

(5) trade of state-owned trust land for a natural area on federal, county, or private land, provided, however, that lands received in exchange for trust lands should be equal in value to the exchanged trust land and as closely as possible equal in area.

History: En. 81-2704 by Sec. 4, Ch. 254, L. 1974; R.C.M. 1947, 81-2704.

76-12-108. Acquisition of lands. Subject to the limits of available appropriations, the board is authorized to acquire interests to lands by any lawful means for the purpose of designating natural areas; provided that the board shall exercise the power of eminent domain only in specific instances where authorized by the legislature.

History: En. 81-2707 by Sec. 7, Ch. 254, L. 1974; R.C.M. 1947, 81-2707.

76-12-109. Report to legislature. The board shall submit to each legislature an annual report on its designation and acquisition activities.

History: En. 81-2705 by Sec. 5, Ch. 254, L. 1974; R.C.M. 1947, 81-2705(part).

76-12-110. Restriction on condemnation or development of natural areas. Natural areas acquired or designated in accordance with the provisions of this part are protected from condemnation or other development adversely affecting the integrity of the natural area until legislative action is taken specifically authorizing the condemnation or development.

History: En. 81-2708 by Sec. 8, Ch. 254, L. 1974; R.C.M. 1947, 81-2708(1).

76-12-111. Continuation of existing uses. Land uses on the designated or acquired natural area in existence at the time of designation or acquisition by the board may continue under appropriate leases or agreements. All such land uses shall be controlled under regulations established by the board under 76-12-112.

History: En. 81-2708 by Sec. 8, Ch. 254, L. 1974; R.C.M. 1947, 81-2708(2).

76-12-112. Administrative rules and hearing requirements. (1) The board shall, after at least one public hearing, promulgate comprehensive regulations for the protection of acquired and designated natural areas within its jurisdiction. Such regulations shall be consistent with the intent of this part and shall be promulgated and enforced so as to protect the qualities of the natural areas. Special attention shall be given to protecting areas from recreational overuse.

(2) The regulations shall provide at least two board meetings per year for the receipt of testimony on the board's proposed designation of natural areas. No area shall be designated by the board unless the opportunity for public testimony has been afforded at meetings provided for in the regulations and positive notification of all involved landowners and lessees has been made.

History: En. 81-2709 by Sec. 9, Ch. 254, L. 1974; R.C.M. 1947, 81-2709.

76-12-113. Advisory council. If the governor appoints a natural areas advisory council, the council shall consist of seven citizens of the state, four of whom shall possess experience in the evaluation and preservation of natural areas and one member each from agriculture, ranching, and industry.

History: En. 81-2710 by Sec. 10, Ch. 254, L. 1974; R.C.M. 1947, 81-2710(part).

76-12-114. Council recommendations to board. (1) The council shall make recommendations to the board for the administration of the natural areas system and additions thereto from state, federal, county, or private land.

(2) Within 90 days of the receipt of a council recommendation, the board shall:

(a) in the case of state trust lands and existing designated areas, promulgate a rule designating a recommended natural area contained in the recommendation and adopting the recommendation or issue a written statement of its reasons for denying the recommendation;

(b) in the case of federal, private, or county land, direct the department to begin investigation and negotiation to acquire by purchase or trade interests in the land necessary to protect the natural area or issue a written statement of its reasons for denying the recommendation.

History: **En. 81-2710 by Sec. 10, Ch. 254, L. 1974; R.C.M. 1947, 81-2710(part).**

76-12-115. Consultation with interested parties. The board and the natural areas advisory council shall consult with citizen organizations and other interested state agencies in the administration of this part.

History: **En. 81-2711 by Sec. 11, Ch. 254, L. 1974; R.C.M. 1947, 81-2711(part).**

76-12-116. Files and proceedings open to public. All files and proceedings under this part shall be open to the public.

History: **En. 81-2711 by Sec. 11, Ch. 254, L. 1974; R.C.M. 1947, 81-2711(part).**

76-12-117. Application of more restrictive provisions. A designated natural area that is or shall become a part of a state park, wildlife refuge, or similar area shall be subject to the provisions of this part and the laws under which the other areas may be administered, and in the case of conflict between the provisions of these laws, the more restrictive provisions shall apply.

History: **En. 81-2712 by Sec. 12, Ch. 254, L. 1974; R.C.M. 1947, 81-2712.**

CHAPTER 13

TIMBER RESOURCES

Part 1 — Protection of Forest Resources

Section

76-13-101. Purpose.
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Part 1

Protection of Forest Resources

76-13-101. Purpose. It is the purpose of this part and part 2 to provide for the protection and conservation of forest resources, range, and water; the regulation of streamflow; and the prevention of soil erosion. It is further the purpose of this part and part 2 to more adequately promote and facilitate the cooperation, financial and otherwise, between the state and public and private agencies which are associated in such work.

History: En. 28-101.1 by Sec. 1, Ch. 253, L. 1974; R.C.M. 1947, 28-101.1.

76-13-102. Definitions. Unless the context requires otherwise, in this part and part 2 the following definitions apply:

(1) "Board" means the board of natural resources and conservation, provided for in 2-15-3302.

(2) "Conservation" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state.

(3) "Department" means the department of natural resources and conservation, provided for in Title 2, chapter 15, part 33.

(4) "Forest fire" means a fire burning uncontrolled on forest lands.

(5) "Forest fire protection" means the work of prevention, detection, and suppression of forest fires and includes training required to perform those functions.

(6) "Forest fire season" means the period of each year beginning on May 1 and ending on September 30, inclusive.

(7) "Forest fire protection district" means a definite forest land area, the boundaries of which are fixed and wherein forest fire protection is provided through the medium of an agency recognized by the board.

(8) "Forest land" means land which has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

(9) "Lands" for conservation purposes means all forest lands within this state which are officially classified by the department as forest lands under 76-13-107.

(10) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

(11) "Recognized agency" means an agency organized for the purpose of providing forest fire protection and recognized by the board as giving adequate fire protection to forest lands in accordance with rules adopted by the board.

History: En. Sec. 3, Ch. 128, L. 1939; amd. Sec. 1, Ch. 216, L. 1955; amd. Sec. 1, Ch. 93, L. 1959; amd. Sec. 1, Ch. 30, L. 1971; amd. Sec. 2, Ch. 253, L. 1974; amd. Sec. 1, Ch. 397, L. 1977; R.C.M. 1947, 28-103(part).

76-13-103. Applicability. This part and part 2 apply to all forest lands within this state which are officially classified by the board as forest lands according to the definition of forest land in 76-13-102.

History: En. Sec. 4, Ch. 128, L. 1939; amd. Sec. 3, Ch. 141, L. 1941; amd. Sec. 1, Ch. 94, L. 1959; amd. Sec. 3, Ch. 253, L. 1974; R.C.M. 1947, 28-104(2).

76-13-104. Functions of department. (1) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and forest fire protection.

(2) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(3) The department shall assist the department of state lands in the protection, economic development, and use of the state forests and forest land held by the state for the purposes and benefit of the common schools and state institutions.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(1), (4), (6).

76-13-105. Protection of nonforest lands and improvements. Nonforest lands and improvements may be protected by the department when requested by the landowner at rates determined by the department.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(5).

76-13-106. Cooperation between department of state lands and county. The department of state lands and the county governing body shall cooperate with the department to the extent legally permissible in providing means and methods of safeguarding the forest land lying within the state and in preventing fire nuisance thereon. The department of state lands and the county governing body shall list forest lands under their jurisdiction with the department for forest protection. The money the state and counties become liable for under this section shall be paid from funds provided by law for the protection of the forest lands owned by the state and counties.

History: En. Sec. 22, Ch. 128, L. 1939; amd. Sec. 15, Ch. 253, L. 1974; amd. Sec. 10, Ch. 397, L. 1977; R.C.M. 1947, 28-122.

76-13-107. Classification of forest lands. The department may classify the forest land areas of the state for which conservation and fire protection measures are reasonably required and change or modify the classification from time to time as in its judgment is proper.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(3).

76-13-108. Person responsible for performance of duties. (1) If the owner does not appear upon the public records as the holder of the legal title to the land or timber, he is nevertheless primarily responsible for the performance of the acts and duties imposed upon him by this part and part 2.

(2) Where the owner of the timber is not the owner of the land, the primary responsibility for the performance of the acts and duties imposed by this part and part 2 is upon the owner of the timber.

(3) Where the state has title to forest lands within any organized forest protection district, it shall be considered as an owner and it shall list its lands and pay the assessments to the recognized agencies responsible for lands in such organized forest protection districts.

History: (1), (2)En. Sec. 4, Ch. 128, L. 1939; amd. Sec. 3, Ch. 141, L. 1941; amd. Sec. 1, Ch. 94, L. 1959; amd. Sec. 3, Ch. 253, L. 1974; Sec. 28-104, R.C.M. 1947; (3)En. Sec. 8, Ch. 128, L. 1939; Sec. 28-108, R.C.M. 1947; R.C.M. 1947, 28-104(1), 28-108.

76-13-109. Rules — limitation on rulemaking authority. (1) The board may adopt and enforce through the department reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of this part and part 2.

(2) These rules may not conflict with the powers of the board of land commissioners.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967; amd. Sec. 4, Ch. 253, L. 1974; amd. Sec. 2, Ch. 397, L. 1977; R.C.M. 1947, 28-105(2).

76-13-110. Owner's right to board hearing. (1) An owner of forest land is entitled to a hearing before the board, after a request therefor, on any subject pertaining to the activities of the board, the department, or any recognized agency as agent of the department affecting the owner's property. A request for a hearing before the board may not have the effect of suspending the operations of the board, the department, or any agent of the department undertaken pursuant to this chapter, but upon the hearing, the board may terminate those operations if found unreasonable.

(2) A hearing pertaining to costs charged against the forest land of an owner for protection thereof, as provided in 76-13-201, must be requested on or before August 15 each year.

History: En. Sec. 4, Ch. 141, L. 1941; amd. Sec. 20, Ch. 253, L. 1974; amd. Sec. 11, Ch. 397, L. 1977; R.C.M. 1947, 28-129.

76-13-111. Permissible expenditures. (1) The following funds may be expended as directed by the department for fire prevention, detection, suppression and for forest range, water, and soil conservation:

(a) all moneys collected by county treasurers as assessments on forest lands for forest protection;

(b) moneys collected for the abatement of public nuisances;

(c) all fines collected for violations of this part or part 2;

(d) the state's share of the cooperative fire protection funds allocated by the federal government;

(e) any other funds provided for the purposes herein indicated.

(2) All other cooperative funds collected, appropriated, or allocated for the use of the department, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of windbreaks and woodlots in localities where those forest plantings are helpful, and funds for other cooperative work, may not be expended except for the specific purposes for which they were collected, appropriated, or allocated.

History: En. Sec. 23, Ch. 128, L. 1939; amd. Sec. 217, Ch. 147, L. 1963; amd. Sec. 2, Ch. 30, L. 1971; amd. Sec. 16, Ch. 253, L. 1974; R.C.M. 1947, 28-123.

76-13-112. Penalty for violation. Unless otherwise provided by this part or part 2, a person who violates this part or part 2 or any rule adopted by the board or department pursuant to this part or part 2 is guilty of a misdemeanor and shall be punished by a fine of not more than $500 or imprisonment in a county jail for not more than 6 months or both.

History: En. Sec. 27, Ch. 128, L. 1939; amd. Sec. 19, Ch. 253, L. 1974; R.C.M. 1947, 28-127.

76-13-113. Destruction of signs. Any person who shall destroy, deface, remove, injure, or disfigure any sign, placard, proclamation, order, warning, or notice issued by any federal, state, or forest protection agency under the provisions of this part or part 2 and erected or posted at any point in the state shall be guilty of a misdemeanor.

History: En. Sec. 20, Ch. 128, L. 1939; R.C.M. 1947, 28-120.

76-13-114. Disposition of fines. Fines collected in a court of the state under this part or part 2 shall be transferred to the state treasurer for deposit in the federal and private grant clearance fund. Whenever a person is convicted in any court of a violation of this part or part 2, the court may levy and collect as costs in the case the amount necessary to compensate the county for the expenditures made in and for the prosecution of the offender. These costs when collected shall be deposited by the court with the proper county treasurer for the benefit of the county.

History: En. Sec. 21, Ch. 128, L. 1939; amd. Sec. 14, Ch. 253, L. 1974; R.C.M. 1947, 28-121.

76-13-115 through 76-13-120 reserved.

76-13-121. Permit for burning required. During the forest fire season or an expansion thereof, a person may not ignite or set a forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or an open fire within forest lands without an official written permit to ignite or set the fire from the recognized protection agency for that protection area. A permit is not required in order to build, set, or ignite a campfire within and upon a designated improved camping ground or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom.

History: En. Sec. 14, Ch. 128, L. 1939; amd. Sec. 11, Ch. 253, L. 1974; amd. Sec. 7, Ch. 397, L. 1977; R.C.M. 1947, 28-114.

76-13-122. Failure to comply with permit. A person to whom a written permit is issued to set or ignite a fire within forest lands during the forest protection season shall comply strictly with the permit. A person who fails to comply with the permit, leaves the fire unattended, leaves the fire before it is totally extinguished, or negligently allows the fire to spread from or beyond the burning area defined by the permit is guilty of a misdemeanor. The department shall prescribe the form and substance of such permit.

History: En. Sec. 16, Ch. 128, L. 1939; amd. Sec. 12, Ch. 253, L. 1974; R.C.M. 1947, 28-116.

76-13-123. Failure to extinguish campfire. Any person who shall fail to extinguish any campfire set or ignited by him within any forest lands before leaving the same, who shall fail to extinguish any campfire used by him or left in his charge before leaving the same, or who shall negligently allow such fire to spread from the plot described in 76-13-121 shall be guilty of a misdemeanor.

History: En. Sec. 15, Ch. 128, L. 1939; R.C.M. 1947, 28-115.

76-13-124. Throwing lighted materials. A person who throws or places any lighted cigarette, cigar, ashes, or other flaming or glowing substance that may start a fire in or near any forest material is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 128, L. 1939; amd. Sec. 8, Ch. 397, L. 1977; R.C.M. 1947, 28-117.

76-13-125. Spark arresters required. No person may use, drive, or operate within any forest lands any internal combustion engine that is not equipped with a modern, efficient, and adequate spark arrester and with modern, efficient devices to prevent the escape of sparks, coals, cinders, and other burning material from the exhaust of any such engine.

History: En. Sec. 18, Ch. 128, L. 1939; amd. Sec. 9, Ch. 397, L. 1977; R.C.M. 1947, 28-118.

76-13-126. Restrictions on sawdust piles. (1) Before each forest fire season, all persons, firms, or corporations creating or responsible for mill waste within the forest areas shall treat, dispose of, remove, or reduce the hazards created so that the accumulation of sawmilling waste does not constitute a fire hazard.

(2) A sawmill located within or contiguous to forest lands may not accumulate in one pile sawdust in excess of an amount resulting from the sawing of 500,000 feet log scale of sawlogs. However, a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the department. If burning is the disposal method elected, each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with rules adopted by the department.

History: En. Sec. 19, Ch. 128, L. 1939; amd. Sec. 1, Ch. 222, L. 1955; amd. Sec. 1, Ch. 195, L. 1969; amd. Sec. 13, Ch. 253, L. 1974; R.C.M. 1947, 28-119.

Part 2

Provision of Fire Protection Services

76-13-201. Duty of owner to protect against fire. (1) An owner of forest land classified as such by the department shall protect against the starting or existence and suppress the spread of fire on that land. This protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection adopted by the board.

(2) If the owner does not provide for the protection and suppression, the department may provide it at a cost to the landowner of not more than 16 cents per acre per year and not less than $6 per owner per year in each protection district. The owner of the land shall pay to the county treasurer of the county in which the land is situated the charge for the same approved by the department in accordance with this part and part 1.

(3) No other charges may be assessed those landowners participating except in cases of proven negligence on the part of the landowner or his agent.

History: En. Sec. 9, Ch. 128, L. 1939; amd. Sec. 2, Ch. 141, L. 1941; amd. Sec. 1, Ch. 188, L. 1955; amd. Sec. 1, Ch. 91, L. 1959; amd. Sec. 1, Ch. 148, L. 1967; amd. Sec. 1, Ch. 252, L. 1974; amd. Sec. 6, Ch. 253, L. 1974; amd. Sec. 4, Ch. 397, L. 1977; R.C.M. 1947, 28-109.

76-13-202. Means by which department may provide protection. The department may provide for forest fire protection of any forest lands through the department or by contract or any other feasible means, in cooperation with any federal, state, or other recognized agency.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(2).

76-13-203. Extension of the forest fire season. In the event of excessive or great fire danger, the period defined in 76-13-102(6) may be expanded when in the judgment of the department dangerous fire conditions exist. When expanded, the department shall give public notice.

History: En. Sec. 3, Ch. 128, L. 1939; amd. Sec. 1, Ch. 216, L. 1955; amd. Sec. 1, Ch. 93, L. 1959; amd. Sec. 1, Ch. 30, L. 1971; amd. Sec. 2, Ch. 253, L. 1974; amd. Sec. 1, Ch. 397, L. 1977; R.C.M. 1947, 28-103(part).

76-13-204. Creation of forest fire protection districts. (1) The board may create forest fire protection districts. Before a district is created, the board shall hold a hearing in any county in which the proposed district or a part thereof is included and the department shall give notice of the hearing at least 20 days in advance thereof to all owners to be affected by the proposed district. Service of the notice may be made by registered or certified mail or by publication in a newspaper published in the county in which the hearing is to be held or, if no newspaper is published in the county, then in a newspaper having a general circulation therein.

(2) A forest fire protection district may not be created unless approved in writing by vote of not less than 51% of the owners representing at least 51% of the acreage to be involved in the proposed forest fire protection district.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967; amd. Sec. 4, Ch. 253, L. 1974; amd. Sec. 2, Ch. 397, L. 1977; R.C.M. 1947, 28-105(1).

76-13-205. Determination of boundaries of district. In establishing boundaries of organized forest fire protection districts covering forest lands, the board may for the purpose of administrative convenience designate recognizable landmarks as boundaries.

History: En. Sec. 10, Ch. 128, L. 1939; amd. Sec. 1, Ch. 92, L. 1959; amd. Sec. 7, Ch. 253, L. 1974; amd. Sec. 5, Ch. 397, L. 1977; R.C.M. 1947, 28-110(2).

76-13-206. What constitutes compliance with duty to protect against fire for landowners within district. An owner of forest lands within an organized forest fire protection district while a member of or while participating in a recognized agency for forest protection or within areas protected by a county shall be considered to have fully complied with the requirements of 76-13-201.

History: En. Sec. 10, Ch. 128, L. 1939; amd. Sec. 1, Ch. 92, L. 1959; amd. Sec. 7, Ch. 253, L. 1974; amd. Sec. 5, Ch. 397, L. 1977; R.C.M. 1947, 28-110(1).

76-13-207. Determination and collection of costs of fire protection. (1) The department shall prepare an annual operation assessment plan in which fire protection costs are determined. The department shall request the legislature to appropriate the state's portion of the cost. After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of classified forest land, as specified in 76-13-201, sufficient to bring the total amount received to the amount specified in the approved plan.

(2) On or before the second Tuesday in August of each year, the department shall certify in writing to the county assessor of each county the names of these owners of forest lands in his county, together with a description of

their lands and a statement of the amount found to be due and owing by each of the owners to the department for forest fire protection.

(3) Upon receiving the certificate from the department showing the amount due, the county assessor shall extend the amounts upon the county tax rolls covering the lands, and the sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. l, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(part).

76-13-208. Nature of assessments for forest fire protection. All payments required of owners of forest lands by this part and part 1 are assessments for benefits actually received by those owners in the protection of their lands and are not a tax upon the property of such owners.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. l, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(3).

76-13-209. Disposition of assessments. All sums collected pursuant to 76-13-207 shall be promptly deposited in the federal and private revenue fund.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. l, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(part).

76-13-210. Payment under protest. An owner who is required to pay to the county treasurer any sum for forest protection as required by this part or part 1 and who contends that he is not legally obligated to pay the sum or some part thereof shall pay it to the county treasurer under written protest stating the reasons for the protest. The payment under protest and all proceedings subsequent thereto shall be in conformity with the law of this state providing for the payment of taxes under protest and action to recover the same. In the hearing and determination of any action to recover the payment under protest, all questions of the legality and reasonableness of the proceedings of the board and the department may be reviewed and decided.

History: En. Sec. 12, Ch. 128, L. 1939; amd. Sec. 9, Ch. 253, L. 1974; R.C.M. 1947, 28-112.

76-13-211. Amount due for protection treated as lien. (1) Whenever the department provides forest protection during a forest fire season for any forest land or timber not protected by the owner thereof as required by this part or part 1, the amount due for the forest protection is a lien upon the land or timber which shall continue until such time as the amount due is paid.

(2) The lien has the same force, effect, and priority as general tax liens under the laws of the state and is subject and inferior only to tax liens on the lands. The county attorney of the county in which the land is situated shall on request of the department foreclose the lien in the name of the state and in the manner provided by law, or the county attorney upon the request of the department shall institute an action against the forest landowner in the name of the state in any district or justice court having jurisdiction to

recover the debt. The state in the action is not required to pay any fees or costs to the clerk of the court or justice of the peace. The complaint and all subsequent proceedings in the action shall conform as nearly as practicable to those provided by 15-16-502.

(3) The remedies provided by this section are cumulative and do not affect the other provisions of this part or part 1 for the payment and collection of amounts due to the department.

History: **En. Sec. 13, Ch. 128, L. 1939; amd. Sec. 10, Ch. 253, L. 1974; R.C.M. 1947, 28-113.**

Part 3

Control of Forest Diseases and Insect Pests

76-13-301. Policy. It is the public policy of the state to protect and preserve forest resources from destruction by forest insect pests and tree diseases, to protect the forests and watersheds of Montana, to enhance the production of forests, to promote the stability of forest industry, to protect the recreational values of the forest, and to independently and through cooperation with the federal government and private forest landowners adopt measures to control, suppress, and eradicate outbreaks of forest insect pests and tree diseases.

History: **En. Sec. 1, Ch. 25, L. 1953; Sec. 28-130, R.C.M. 1947; amd. and redes. 28-204 by Sec. 21, Ch. 253, L. 1974; R.C.M. 1947, 28-204.**

76-13-302. Definitions. In this part, the following definitions apply:

(1) "Department" means the department of natural resources and conservation, provided for in Title 2, chapter 15, part 33.

(2) "Forest land" means any land which has enough forest growth, standing or down, to constitute in the judgment of the department an insect or disease infestation breeding ground of a nature to constitute a menace, injurious and dangerous to the forest resources in the district or zone of infestation.

(3) "Forest landowner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber, other than an easement, right-of-way, or mineral reservation.

History: **En. Sec. 3, Ch. 25, L. 1953; Sec. 28-131, R.C.M. 1947; amd. and redes. 28-205 by Sec. 22, Ch. 253, L. 1974; R.C.M. 1947, 28-205.**

76-13-303. Creation of zone of infestation. Whenever the department determines that there exists an infestation of forest insect pests or forest tree diseases injurious to the timber or forest growth on forest lands within the state and that the infestation is of such a character as to be a menace to the timber or forest growth of this state, the department shall, with the approval of the board of natural resources and conservation, declare the existence of a zone of infestation and fix the boundaries so as to definitely describe and identify the zone.

History: **En. Sec. 5, Ch. 25, L. 1953; Sec. 28-133, R.C.M. 1947; amd. and redes. 28-206 by Sec. 23, Ch. 253, L. 1974; R.C.M. 1947, 28-206(1).**

76-13-304. Suppression and eradication of infestation. (1) The department may enter upon the land within the zone and cause the forest insect pest infestation or forest tree disease to be suppressed, eradicated, and destroyed in the manner approved by it.

(2) In order to accomplish the suppression, eradication, and destruction of the infestation, the department may enter into cooperative agreements with the federal government or other public or private agencies and with forest landowners, using such funds as are made available for those purposes.

History: En. Sec. 5, Ch. 25, L. 1953; Sec. 28-133, R.C.M. 1947; amd. and redes. 28-206 by Sec. 23, Ch. 253, L. 1974; R.C.M. 1947, 28-206(2).

76-13-305. Termination of zone of infestation. When the department determines that forest insect or disease control work within the designated zone of infestation is no longer necessary or feasible, it shall abolish the zone.

History: En. Sec. 6, Ch. 25, L. 1953; Sec. 28-134, R.C.M. 1947; amd. and redes. 28-207 by Sec. 24, Ch. 253, L. 1974; R.C.M. 1947, 28-207.

Part 4

Control of Timber Slash and Debris

76-13-401. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of natural resources and conservation, provided for in 2-15-3302.

(2) "Department" means the department of natural resources and conservation, provided for in Title 2, chapter 15, part 33.

(3) "Person" means an individual, association, partnership, corporation, estate, or any other entity.

History: En. 28-403.1 by Sec. 1, Ch. 522, L. 1975; R.C.M. 1947, 28-403.1.

76-13-402. Basis for management of fire hazards. The reduction or management of fire hazards referred to in this part shall be carried on by the department and the state fire wardens in keeping with modern and progressive forest practices and more effective fire control and may include but is not limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard.

History: Ap. p. Sec. 5, Ch. 207, L. 1959; amd. Sec. 1, Ch. 147, L. 1971; amd. Sec. 31, Ch. 253, L. 1974; amd. Sec. 6, Ch. 522, L. 1975; Sec. 28-408, R.C.M. 1947; Ap. p. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974; Sec. 28-411, R.C.M. 1947; R.C.M. 1947, 28-408(2), 28-411(part).

76-13-403. Supervision by department. The department, under such rules as the board adopts, may supervise and inspect the reduction or management of any fire hazard created by the cutting of any forest product on private land in the state.

History: En. Sec. 5, Ch. 207, L. 1959; amd. Sec. 1, Ch. 147, L. 1971; amd. Sec. 31, Ch. 253, L. 1974; amd. Sec. 6, Ch. 522, L. 1975; R.C.M. 1947, 28-408(1).

76-13-404. Contracts with owners of forest lands. The department may, in such form and containing such conditions as it prescribes, enter into agreements with the owners of any forest lands or any operator engaged in operations on lands within the state whereby slash is created. Under the contract the department may assume all responsibility for the reduction or management of any fire hazard. The department may provide in the agreement the amount to be paid by the owner or operator to the department by reason of its agreement to assume the reduction or management of the fire hazard, but the amount may not exceed $6 for each 1,000 feet log scale or the equivalent thereof if forest products other than logs are cut.

History: En. Sec. 7, Ch. 207, L. 1959; amd. Sec. 2, Ch. 147, L. 1971; amd. Sec. 32, Ch. 253, L. 1974; amd. Sec. 7, Ch. 522, L. 1975; R.C.M. 1947, 28-410; amd. Sec. 1, Ch. 670, L. 1979.

76-13-405. Contracts with forest protective agencies. The department is hereby authorized to enter into contracts with forest protective agencies, including agencies of the United States, for the reduction or management of such fire hazards when in its opinion the work can best be accomplished in that manner.

History: En. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974; R.C.M. 1947, 28-411(part).

76-13-406. Limitation on liability. The department, state firewardens, and recognized forest protective agencies, including any agency of the United States, with which the department has entered into an agreement for the reduction or management of any fire hazard as provided in 76-13-405 and any officer or official of such agency shall not be liable for any damage to the land, product, improvement, or other things of value of whatsoever nature upon the lands on which the fire hazards are being managed or reduced in accordance with provisions of 76-13-402 through 76-13-405 and 76-13-411(1) when all requisite care and caution has been used and such work is being or has been performed in compliance with the rules provided in 76-13-403.

History: En. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974; R.C.M. 1947, 28-411(part).

76-13-407. Reduction of slash and debris along right-of-way. (1) A person clearing right-of-way for any railroad, public highway, public trail, private road, trail, ditch, dike, pipeline or wire lines, or any other transmission or transportation utility right-of-way, except temporary roads located within the boundaries of the cutting area and which are used in the actual logging operations, shall reduce the hazard resulting from the clearing or from the cutting of material for the construction of the public or private utility unless exempted by the department. At least 10 days before commencement of the clearing, the person conducting the clearing shall notify the department of commencement of the clearing in the form and manner the department provides.

(2) Hazard reduction, including burning where this method of disposal is used, shall be done as rapidly as cutting or clearing progresses; however, upon application to the department, it may grant a permit extending the time within which the burning must be done in compliance with this chapter relating to burning permits during the closed season.

(3) This section applies to all clearing of rights-of-way across private land and on behalf of the state, county, highway districts, and road districts, whether the work is done by day labor or by contract, and unless unavoidable emergency prevents, provision shall be made by the proper officials conducting, directing, or letting the work for withholding until it is complete a

sufficient portion of the payment therefor to assure compliance with this part.

History: **En. Sec. 2, Ch. 207, L. 1959; amd. Sec. 28, Ch. 253, L. 1974; amd. Sec. 3, Ch. 522, L. 1975; R.C.M. 1947, 28-405; amd. Sec. 2, Ch. 670, L. 1979.**

76-13-408. Fire hazard reduction agreement and bond. (1) Before cutting any forest product or conducting timber stand improvement such as but not limited to thinning, weeding, or pruning upon private lands within the state, the person conducting such practice shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement with the department and by posting a bond to the state in such form and for such amount as may be prescribed by the department, conditioned upon full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted by the board.

(2) The bond shall be released upon completion of the work done in compliance with the terms of the agreement.

History: **En. Sec. 1, Ch. 207, L. 1959; amd. Sec. 27, Ch. 253, L. 1974; amd. Sec. 2, Ch. 522, L. 1975; R.C.M. 1947, 28-404.**

76-13-409. Duty of purchaser to insure compliance. (1) The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the state shall, before making the purchase or contract to purchase, determine that the person engaged or about to engage in the cutting of these forest products has provided for the reduction or management of the fire hazard thus created, as provided in this part.

(2) When the hazard reduction agreement provides that the purchaser of forest products shall withhold moneys to insure faithful compliance with this part, the purchaser shall transmit all moneys which are withheld to the department on or before the 15th day of each month, clearly identifying by number the hazard reduction agreement to which the withheld moneys pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by the department at any reasonable time.

(3) Upon the department making the determination that faithful compliance with this part has been achieved, the department shall return to the owner thereof all such withheld money with the exception of 4% for inspection, administration, enforcement, and smoke management.

History: **En. Sec. 3, Ch. 207, L. 1959; amd. Sec. 29, Ch. 253, L. 1974; amd. Sec. 4, Ch. 522, L. 1975; R.C.M. 1947, 28-406; amd. Sec. 3, Ch. 670, L. 1979.**

76-13-410. Failure to comply. (1) If a person fails, refuses, or neglects to properly dispose of slash in accordance with the requirements of 76-13-407 and 76-13-408 and is engaged or is about to engage, either for himself or for another, in cutting timber or other forest products and thereby creates a fire hazard, he may be enjoined from further timber harvesting operations until 76-13-407 and 76-13-408 have been complied with. The department may initiate the proceedings and may obtain a temporary restraining order, injunction, or writ of mandate. The proceedings shall be conducted in the district court of the county where the land is located.

(2) If a person fails to comply with 76-13-407 or 76-13-408 and has cut any forest products and fails to comply within 30 days after being notified to do so by the department, the department may complete, direct, or authorize the disposal of the slash at the expense of the owner of the timber or other forest products cut or produced from the land upon which the undisposed of fire hazard remains.

(3) The cost and expense of the disposal, plus 20% of the cost and expense of the disposal as a penalty, constitutes a lien upon the forest products so cut or produced from the land. If payment of the sum demanded is not made to the department within 10 days of its written demand, the department shall bring legal action on behalf of the state to recover the debt.

History: En. Sec. 4, Ch. 207, L. 1959; amd. Sec. 30, Ch. 253, L. 1974; amd. Sec. 5, Ch. 522, L. 1975; R.C.M. 1947, 28-407(1) thru (3); amd. Sec. 4, Ch. 670, L. 1979.

76-13-411. Certification of clearance. (1) A person who has entered into a contract with the department for the reduction or management of any fire hazard, upon payment of the contract price in accordance with the terms of the contract and the full compliance with the terms of the contract by the person, shall be granted a certification of clearance by the department and be relieved of any and all further liability and responsibility for the removal or reduction of the fire hazard. The department may require that a cash bond, equivalent to the contract price and conditioned upon the faithful performance of the contract, be deposited by the person with the department.

(2) The department shall not file for record any lien against the property of any person who has been issued a certification of compliance with 76-13-408 and 76-13-409 covering the property.

History: (1)En. Sec. 9, Ch. 207, L. 1959; amd. Sec. 3, Ch. 147, L. 1971; amd. Sec. 34, Ch. 253, L. 1974; amd. Sec. 8, Ch. 522, L. 1975; Sec. 28-412, R.C.M. 1947; (2)En. Sec. 4, Ch. 207, L. 1959; amd. Sec. 30, Ch. 253, L. 1974; amd. Sec. 5, Ch. 522, L. 1975; Sec. 28-407, R.C.M. 1947; R.C.M. 1947, 28-407(4), 28-412.

76-13-412. Violations. A person convicted of violating this part is guilty of a misdemeanor and shall be fined not less than $100 or more than $1,000.

History: En. 28-413 by Sec. 9, Ch. 522, L. 1975; R.C.M. 1947, 28-413.

76-13-413. Failure to submit withholding — remedy. (1) If a purchaser does not submit withheld money on or before the 15th day of each month when required to do so under 76-13-407, he must be notified by registered or certified mail that he is in noncompliance and be given 15 days to submit all money then due. If he fails to submit all money due within the required time, the department may initiate proceedings to enjoin further processing of all wood products until all money due is paid in full or satisfactory arrangements for payments are made.

(2) If payment is not made within the 15-day period after notification as provided in subsection (1), a penalty of 5% of the amount due must be assessed. The department may abate the penalty if the purchaser establishes that the failure to submit the amount due as required was due to reasonable cause and was not due to neglect on his part. The department, in addition

to the penalty, may impose interest at the rate of 10% a year on any balance remaining unpaid.

History: **En. Sec. 5, Ch. 670, L. 1979.**

Compiler's Comments

Commissioner correction. The reference in subsection (1) to 76-13-407 appears to be in error and should be a reference to 76-13-409.

Part 5

Portable Sawmills on Forest Lands

76-13-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) "Portable sawmill" means a sawmill located upon forest land within the state and having a rated capacity of less than 5,000 feet per hour of operation.

History: **En. 28-801 by Sec. 106, Ch. 253, L. 1974; R.C.M. 1947, 28-801.**

76-13-502. Portable sawmill license required. It is unlawful to operate a portable sawmill located upon forest lands within the state without first obtaining a license therefor from the department.

History: **En. Sec. 1, Ch. 124, L. 1931; re-en. Sec. 1839.1, R.C.M. 1935; Sec. 81-1501, R.C.M. 1947; amd. and redes. 28-802 by Sec. 107, Ch. 253, L. 1974; R.C.M. 1947, 28-802.**

76-13-503. Application for license — fee. (1) Whenever a person, firm, or corporation desires to commence the operation of a portable sawmill located or to be located upon forest lands within the state, that person, firm, or corporation shall apply to the department in writing for a license to operate the portable sawmill. The application shall include the name of the person, firm, or corporation contemplating the operation of the sawmill; the location thereof by section, township, and range numbers; the rated capacity of the sawmill and the approximate amount of stumpage to be cut at the proposed setting; and the approximate date desired for the commencement of the operation.

(2) The application shall be accompanied by the payment of a fee of $2, which is fixed as the license fee for the operation of any portable sawmill, to be credited to the federal and private grant clearance fund.

History: **En. Sec. 2, Ch. 124, L. 1931; re-en. Sec. 1839.2, R.C.M. 1935; amd. Sec. 2, Ch. 248, L. 1965; Sec. 81-1502, R.C.M. 1947; amd. and redes. 28-803 by Sec. 108, Ch. 253, L. 1974; R.C.M. 1947, 28-803.**

76-13-504. Issuance of license — term. Upon the receipt of the application and the payment of the fee, the department shall issue a license to the person, firm, or corporation applying therefor. The license shall be upon a form provided by the department and shall cover such period as the sawmill remains in continuous operation on a single setting or location or until revocation by the department.

History: **En. Sec. 3, Ch. 124, L. 1931; re-en. Sec. 1839.3, R.C.M. 1935; Sec. 81-1503, R.C.M. 1947; amd. and redes. 28-804 by Sec. 109, Ch. 253, L. 1974; R.C.M. 1947, 28-804.**

76-13-505. Revocation of license. Whenever it appears that there is a violation of any law of the state enacted for the protection of forest and forest lands in connection with the operation of a portable sawmill or in the protection of the lands from which the timber sawed or to be sawed at a mill is cut, the department may revoke the license and thereby suspend the operation of a sawmill until the conditions constituting a violation of law are remedied and removed.

History: En. Sec. 4, Ch. 124, L. 1931; re-en. Sec. 1839.4, R.C.M. 1935; Sec. 81-1504, R.C.M. 1947; amd. and redes. 28-805 by Sec. 110, Ch. 253, L. 1974; R.C.M. 1947, 28-805.

76-13-506. Penalty. A person, firm, or corporation violating this part is guilty of a misdemeanor and shall be fined not less than $25 or more than $500, which fines are to be credited to the general school funds of the state.

History: En. Sec. 6, Ch. 124, L. 1931; re-en. Sec. 1839.6, R.C.M. 1935; Sec. 81-1506, R.C.M. 1947; amd. and redes. 28-806 by Sec. 111, Ch. 253, L. 1974; R.C.M. 1947, 28-806(part).

76-13-507. Effect on liability for fire. This part shall not be construed to in any manner affect the civil liability of any person in connection with the origin or spread of fire in the forest lands of the state.

History: En. Sec. 6, Ch. 124, L. 1931; re-en. Sec. 1839.6, R.C.M. 1935; Sec. 81-1506, R.C.M. 1947; amd. and redes. 28-806 by Sec. 111, Ch. 253, L. 1974; R.C.M. 1947, 28-806(part).

CHAPTER 14

RANGELAND RESOURCES

Part 1 — Rangeland Management

Section
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76-14-102. Purpose.
76-14-103. Definitions.
76-14-104. Types of land included as rangeland.
76-14-105. Role of state coordinator.
76-14-106. Duties of rangeland resources committee.

Part 1

Rangeland Management

76-14-101. Short title. This part shall be known as the "Montana Rangeland Resources Act".

History: En. 76-301 by Sec. 1, Ch. 408, L. 1977; R.C.M. 1947, 76-301.

76-14-102. Purpose. The purpose of this part is to establish a program of rangeland management whereby:

(1) the importance of Montana's rangeland with respect to livestock, forage, wildlife habitat, high-quality water production, pollution control, erosion control, recreation, and the natural beauty of the state is recognized;

(2) cooperation and coordination of range management activities between persons and organizations charged with or having the management of rangeland, whether private or public, can be promoted and developed; and

(3) those who are doing exceptional work in range management can receive appropriate recognition.

History: En. 76-302 by Sec. 2, Ch. 408, L. 1977; R.C.M. 1947, 76-302.

76-14-103. Definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Montana rangeland resources committee selected as provided in 2-15-3305(2).

(2) "Department" means the department of natural resources and conservation.

(3) "Grazeable woodlands" means forest land on which the understory includes, as an integral part of the forest plant community, plants that can be grazed without significantly impairing other forest values.

(4) "Montana rangeland resource program" means the rangeland resource program administered by the conservation districts division of the department of natural resources and conservation in concert with the Montana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state.

(5) "Rangeland" means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use.

(6) "Range management" means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources.

(7) "State coordinator" means the state coordinator for the Montana Rangeland Resources Act provided for in 2-15-3304.

(8) "Users of rangeland" means all persons, including but not limited to ranchers, farmers, sportsmen, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands.

History: (1) thru (6), (8)En. 76-303 by Sec. 3, Ch. 408, L. 1977; Sec. 76-303, R.C.M. 1947; (7)En. by Code Commissioner, 1979; R.C.M. 1947, 76-303(part).

76-14-104. Types of land included as rangeland. The term "rangeland" includes lands revegetated naturally or artifically to provide a forage cover that is managed like native vegetation. Rangelands include natural grasslands, savannahs, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

History: En. 76-303 by Sec. 3, Ch. 408, L. 1977; R.C.M. 1947, 76-303(part).

76-14-105. Role of state coordinator. The state coordinator shall:

(1) serve as an advisor, counselor, and coordinator for and between persons and agencies involved in range management;

(2) strive to create understanding and compatibility between the many users of rangeland, including sportsmen, recreationists, ranchers, and others;

(3) promote and coordinate the adoption and implementation of sound range management plans to minimize conflicts between governmental agencies and private landowners;

(4) participate in zoning and planning studies to insure that native ranges are adequately represented at sessions for development of zoning and planning regulations;

(5) coordinate range management research to help prevent duplication and overlap of effort in this area.

History: **En. 76-304 by Sec. 4, Ch. 408, L. 1977; R.C.M. 1947, 76-304(2).**

76-14-106. Duties of rangeland resources committee. The committee shall:

(1) review and recommend annual and long-range work programs;

(2) suggest priorities of work;

(3) provide advice and counsel to the coordinator for carrying out the rangeland resource program.

History: **En. 76-307 by Sec. 7, Ch. 408, L. 1977; R.C.M. 1947, 76-307.**

CHAPTER 15

CONSERVATION DISTRICTS

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Part 1

General Provisions

76-15-101. Legislative determinations. It is hereby declared, as a matter of legislative determination:

(1) that the farm and grazing lands of the state of Montana are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land use practices have caused and have contributed to and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest cover has interfered with the

natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible;

(2) that the consequences of such soil erosion in the form of soil blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams, and ditches; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops and range cover grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop and range vegetation cover failures; and increase in the speed and volume of rainfall runoff, causing severe and increasing floods which bring suffering, disease, and death; impoverishment of families attempting to operate eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in municipal water supply, irrigation developments, farming, and grazing;

(3) that to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages and further the conservation, development, utilization, and disposal of water, it is necessary that land use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land use practices and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

History: **En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(A) thru (C).**

76-15-102. Declaration of policy. It is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

History: **En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(D).**

76-15-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "District" or "conservation district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(5) "Due notice" means notice published at least twice, with an interval of at least 14 days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area or by posting at a reasonable number of conspicuous places within the appropriate area, the posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally.

(6) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(7) "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality, or other entity who holds title to or is in possession of lands lying within a district organized under this chapter, whether as owner, lessee, renter, tenant, or otherwise.

(8) "Petition" means a petition filed under 76-15-201 for the creation of a district.

(9) "Qualified elector" means an elector as defined in Title 13.

(10) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this chapter.

(11) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

History: **En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part); amd. Sec. 393, Ch. 571, L. 1979.**

76-15-104. Adjournment of hearings. At any hearing held pursuant to the notice, at the time and place designated in the notice, adjournment may be made from time to time without the necessity of renewing the notice for the adjourned dates.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part).

76-15-105. Duties of department. In addition to the duties hereinafter conferred upon the department, it shall:

(1) offer assistance as may be appropriate to the supervisors of conservation districts in the carrying out of their powers and programs;

(2) keep the supervisors of each of the several districts informed of the activities and experiences of all other districts and facilitate an interchange of advice and experiences between the districts and cooperation between them;

(3) coordinate the programs of the several conservation districts hereunder so far as this may be done by advice and consultation;

(4) secure the cooperation and assistance of the United States and of agencies of this state in the work of the districts;

(5) disseminate information throughout the state concerning the activities and programs of the conservation districts; and

(6) encourage the formation of districts in areas where their organization is desirable.

History: En. Sec. 4, Ch. 72, L. 1939; amd. Sec. 1, Ch. 21, L. 1951; amd. Sec. 1, Ch. 47, L. 1967; amd. Sec. 1, Ch. 291, L. 1969; amd. Sec. 3, Ch. 431, L. 1971; amd. Sec. 89, Ch. 253, L. 1974; R.C.M. 1947, 76-104.

Part 2

Creation of Conservation Districts

76-15-201. Petition to create conservation district. (1) Any 10 qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the board approve the organization of a conservation district to function in the territory described in the petition.

(2) The petition shall set forth:

(a) the proposed name of the district;

(b) that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the territory described in the petition;

(c) a description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions but shall be considered sufficient if generally accurate;

(d) a request that the board duly define the boundaries for the district; that a referendum be held within the territory so defined on the question of the creation of a conservation district in the territory; and that the board determine that a district be created.

(3) Where more than one petition is filed covering parts of the same territory, the board may consolidate all or any part of the petitions.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(1), (2).

76-15-202. Hearing on petition. (1) Within 30 days after a petition has been filed with the department, it shall cause due notice to be given of a proposed hearing before the department upon the question of the desirability and necessity in the interest of the public health, safety, and welfare of the creation of the district; upon the question of the appropriate boundaries to be assigned to the district; upon the propriety of the petition and other proceedings taken under this chapter; and upon all questions relevant to those inquiries.

(2) All qualified electors within the limits of the territory described in the petition and of lands within any territory considered for addition to the described territory and all other interested parties are entitled to attend the hearings and be heard.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-203. Hearing procedure if additional territory to be included. If it appears to the board after reviewing the record of the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the board shall adjourn the hearing and the department shall cause due notice of a further hearing to be given throughout the entire area considered for inclusion in the district, and the further hearing shall be held by the department.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-204. Board determination of need for district. (1) After the hearing, if the board determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available to the department or the board, that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district.

(2) If the board determines after the hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall deny the petition. After 6 months have expired from the date of the denial of a petition, subsequent petitions covering the same or substantially the same territory may be filed and a new hearing held and determinations made thereon.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-205. Criteria for determining need. In making the determinations and in defining the boundaries, the board shall consider the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits those lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions and other conservation districts already organized or proposed for organization under this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in 76-15-101 and 76-15-102. The territory to be included within the boundaries need not be contiguous.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-206. Determination of administrative practicability of district. After the board has made and recorded a determination that there is need in the interest of the public health, safety, and welfare for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within the boundaries with the powers conferred upon conservation districts in this chapter is administratively practicable and feasible.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-207. Referendum on question of creating district. (1) To assist the board in the determination of this administrative practicability and feasibility, the department shall, within a reasonable time after entry of the board's finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, hold a referendum within the proposed district upon the proposition of the creation of the district and cause due notice of the referendum to be given.

(2) The question shall be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the county(ies) of ...., ..., and ...." and "Against creation of a conservation district of the lands below described and lying in the county(ies) of .... and ...." shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of the district. The ballot shall set forth the boundaries of the proposed district as determined by the board.

(3) All qualified electors within the boundaries of the territory, as determined by the department, are eligible to vote in the referendum.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-208. Administration of hearings and referenda. (1) The department shall pay all expenses for the issuance of the notices and the conduct of the hearings and referenda and shall supervise the conduct of the hearings and referenda. It shall adopt appropriate rules governing the conduct of the hearings and referenda and providing for the registration prior to the date of the referendum of all eligible voters or prescribing some other appropriate procedure for the determination of those eligible as voters in the referendum.

(2) No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice thereof has been given substantially as herein provided and the referendum has been fairly conducted.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(5).

76-15-209. Board procedure following referendum. (1) The department shall publish the result of the referendum, and the board shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the board determines that the operation of the district is administratively practicable and feasible, it shall record that determination and proceed with the organization of the district in the manner hereinafter provided.

(3) If the board determines that the operation of the district is not administratively practicable and feasible, it shall record that determination and deny the petition. After 6 months have expired from the date of entry of a determination by the board that operation of a proposed district is not administratively practicable and feasible and denial of a petition pursuant to the determination, subsequent petitions may be filed and action taken thereon in accordance with this part.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-210. Criteria for determining administrative practicability. (1) In making its determination, the board shall consider the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within the district, and such other economic and social factors relevant to the determination, having due regard to the legislative determinations set forth in 76-15-101 and 76-15-102.

(2) However, the board may not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district has been cast in favor of the creation of the district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-211. Appointment of supervisors. If the board determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act with the three supervisors first elected, as provided hereinafter, as the initial governing body of the district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-212. Submission of application by appointed supervisors. The district is a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following proceedings:

(1) The two appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth:

(a) that a petition for the creation of the district was filed with the department pursuant to this chapter, that the proceedings specified in this chapter were taken pursuant to the petition, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this chapter, and that the board has appointed them as supervisors;

(b) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office;

(c) the term of office of each of the supervisors;

(d) the name which is proposed for the district; and

(e) the location of the principal offices of the supervisors of the district.

(2) The application shall be subscribed and sworn to by each of the supervisors.

(3) The application shall be accompanied by a statement by the department which shall certify that a petition was filed, notice issued, and hearing held as provided in this part; that the board determined that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the proposed territory and defined the boundaries thereof; that notice was given and a referendum held on the question of the creation of the district; and that the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district and that thereafter the board determined that the operation of the proposed district is administratively practicable and feasible. The statement shall also set forth the boundaries of the district as they have been defined by the board.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-213. Processing of application by secretary of state. (1) The secretary of state shall examine the application and statement, and if he finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office.

(2) If the secretary of state finds that the name proposed for the district is identical with that of any other conservation district of this state or so nearly similar as to lead to confusion and uncertainty, he shall certify that fact to the board, which shall thereupon submit to the secretary of state a new name for the district which is not subject to such defects. Upon receipt of the new name free of such defects, the secretary of state shall record the application and statement with the name so modified in an appropriate book of record in his office.

(3) The secretary of state shall make and issue to the supervisors without cost a certificate under the seal of the state of the due organization of the district and shall record the certificate with the application and statement.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-214. Evidentiary status of certificate issued by secretary of state. In a suit, action, or proceeding involving the validity or enforcement of or relating to a contract, proceeding, or action of the district, the district shall be considered to have been established in accordance with this chapter upon proof of the issuance of the certificate by the secretary of state. A copy of the certificate, duly certified by the secretary of state, is admissible in evidence in the suit, action, or proceeding and is proof of the filing and contents thereof.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(11).

76-15-215. District as governmental subdivision and public body. When the application and statement have been made, filed, and recorded as herein provided, the district is a governmental subdivision of this state and a public body, corporate and politic, exercising public powers.

History: Ap. p. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; Sec. 76-105, R.C.M. 1947; Ap. p. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; Sec. 76-108, R.C.M. 1947; R.C.M. 1947, 76-105(part), 76-108(part).

76-15-216. Limitation on territory included in district. The boundaries of the district shall include the territory as determined by the board, but they may not include any area included within the boundaries of another conservation district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

Part 3

Administration of Conservation Districts

76-15-301. Establishment of supervisor areas. The conservation district is authorized to divide the unincorporated area of the district into five supervisor areas.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(12).

76-15-302. Nominations for supervisor. (1) Within 30 days after the date of issuance of a certificate of organization of a conservation district by the secretary of state, nominating petitions may be filed with the registrar, as defined in Title 13, to nominate candidates for supervisors of the district. A nominating petition may not be accepted by the registrar unless it is subscribed by 10 or more qualified electors within the boundaries of the district or supervisor areas thereof wherein the nominee resides. Qualified electors may sign more than one nominating petition to nominate more than one candidate for supervisor.

(2) If more than six candidates are nominated, the registrar shall give due notice of a nominating election to be held for the selection of six candidates for supervisor to appear on the next general election ballot. This nominating election may be held in conjunction with the state primary election.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(part).

76-15-303. General election. (1) All qualified electors within the district are eligible to vote in the election.

(2) The three candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district.

(3) In the general election, the names of all individuals nominated by petition (if six or fewer) or by election shall be printed, arranged in a rotating order of the surnames, as provided under 13-12-205, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the elector's preference.

(4) The election administrator in each county shall prepare suitable nonpartisan ballots or place the names of candidates on the regular general election ballot in the same manner as other nonpartisan candidates for the election of supervisors, which ballots shall be delivered to the election judges in those precincts which contain registered electors prior to each general election and each primary election in which more than four candidates are nominated. The election judges and other election officials in such precincts shall submit such ballots to qualified electors, conduct the election, and tabulate the results of such election in the manner provided in Title 13.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(part); amd. Sec. 369, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

76-15-304. Election of supervisors. (1) Two supervisors shall be elected at the second general election following the organization or reorganization of the district and shall replace the two supervisors appointed by the department. Thereafter, a district shall alternately elect three and two supervisors at succeeding general elections.

(2) Nominations for the election of supervisors shall be made as provided under 76-15-302 except that a nominating election shall be held if more than four candidates are nominated by petition when two supervisors are to be elected.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(2).

76-15-305 through 76-15-310 reserved.

76-15-311. Governing body of district. (1) If there are no incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of five elected supervisors.

(2) If there are incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of seven supervisors as follows:

(a) The board of supervisors, in addition to five elected supervisors, shall consist of two appointed supervisors, making a total of seven supervisors in such districts. The two appointed supervisors must be residents of municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall appoint the two additional supervisors after consultation with the elected supervisors. The term of office of the appointed supervisors shall be 3 years.

(b) Where there are more than two incorporated municipalities within a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district and no municipality shall have more than one appointed supervisor residing therein.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(1) thru (3); amd. Sec. 17, Ch. 266, L. 1979.

76-15-312. Term of office and vacancies. (1) The term of office of each supervisor shall be 4 years, except that the supervisors who are first appointed by the department shall be designated to serve for terms of 2 years from the date of their appointment. An elected supervisor shall hold office until his successor has been elected and has qualified.

(2) Any vacancy occurring in the office of an elected supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part).

76-15-313. Operation of supervisors. (1) The supervisors shall annually elect a chairman from their members.

(2) A majority of the supervisors constitute a quorum, and the concurrence of a majority in any matter within their duties is required for its determination.

(3) Except for special projects in which funds are available, a supervisor may not receive compensation for his services, but he is entitled to expenses, including travel expenses as provided for in 2-18-501 through 2-18-503, incurred in the discharge of his duties.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 2, Ch. 533, L. 1979.

76-15-314. Removal of a supervisor. A supervisor may be removed by the board, upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part).

76-15-315. Administrative functions of the supervisors. (1) The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require and shall determine their qualifications, duties, and compensation.

(2) The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees such powers and duties as they consider proper.

(3) The supervisors shall furnish to the department copies of such ordinances, rules, orders, contracts, forms, and other documents as they adopt or employ and such other information concerning their activities as may be required in the performance of their duties under this chapter.

(4) The supervisors shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of

all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part).

76-15-316. Cooperation with municipalities and counties. The supervisors may invite the governing body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of the municipality or county.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(7).

76-15-317. Cooperation with state agencies. Agencies of this state which shall have jurisdiction over or be charged with the administration of any state-owned lands and of any county or other governmental subdivision of the state, which shall have jurisdiction over or be charged with the administration of any county-owned or other publicly owned lands lying within the boundaries of any district organized hereunder shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this chapter. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land use regulations adopted pursuant to 76-15-701 through 76-15-707 shall have the force and effect of law over all such publicly owned lands and shall be in all respects observed by the agencies administering such lands.

History: En. Sec. 13, Ch. 72, L. 1939; R.C.M. 1947, 76-113.

76-15-318. Cooperation between districts. The supervisors of any two or more districts organized under the provisions of this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

History: En. Sec. 12, Ch. 72, L. 1939; R.C.M. 1947, 76-112.

76-15-319. Legal assistance. (1) The supervisors may call upon the county attorney of the county in which the greatest portion of the district is located or the attorney general of the state for such legal services as they may require or may employ their own counsel and legal staff.

(2) If the county attorney is unable to provide legal assistance because of lack of staff or conflict of interest, then the matter may be referred to the attorney general or the department of natural resources and conservation.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 3, Ch. 533, L. 1979.

76-15-320. Legal status of district. A conservation district and the supervisors thereof shall have the power to sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

History: **En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(part).**

76-15-321. Rulemaking authority. A conservation district and the supervisors thereof shall have the power to make and from time to time amend and repeal rules to carry into effect the purposes and powers of this chapter.

History: **En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(part); amd. Sec. 18, Ch. 266, L. 1979.**

76-15-322. Filing of notice of organization of district. Within 10 days after the creation of the district, the supervisors of a conservation district shall cause a notice declaring the district organized to be filed for record in the office of the county clerk and recorder of each county in which any portion of the district is situated.

History: **En. Sec. 1, Ch. 253, L. 1963; amd. Sec. 3, Ch. 291, L. 1969; amd. Sec. 14, Ch. 431, L. 1971; R.C.M. 1947, 76-201(part).**

76-15-323. Copies of notice transmitted to county commissioners. Within 30 days after receipt of such notice, the county clerk and recorder shall transmit a copy of the same to the board of county commissioners, who shall determine whether the district has been lawfully organized.

History: **En. Sec. 2, Ch. 253, L. 1963; amd. Sec. 1, Ch. 152, L. 1965; R.C.M. 1947, 76-202.**

Part 4

Operation of Conservation Districts

76-15-401. Study of problems relating to soil and water conservation. (1) A conservation district and the supervisors thereof shall have the power to:

(a) conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, and water quality as it pertains to saline seep and to the conservation, development, utilization, and disposal of water and the preventive and control measures and works of improvement needed;

(b) publish the results of such surveys, investigations, or research; and

(c) disseminate information concerning such preventive and control measures and works of improvement.

(2) In order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies or with the United States or any of its agencies.

History: **En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(1).**

76-15-402. Development of soil and water conservation plans. A conservation district and the supervisors thereof shall have the power to:

(1) develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention and conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping, range programs, tillage and grazing practices, and changes in use of land; and

(2) publish such plans and information and bring them to the attention of occupiers of lands within the district.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(8).

76-15-403. Operation of projects and works. A conservation district and the supervisors thereof shall have the power to:

(1) conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of such lands or the necessary rights or interest in such land;

(2) carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, including but not limited to engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in 76-15-101(3) on lands owned or controlled by this state or any of its agencies with the cooperation of the agency administering and having jurisdiction thereof and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(3) cooperate or enter into agreements with and, within the limits of appropriations duly made available to it by law, furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of erosion control and prevention operations, works of improvement for flood prevention, and the conservation, development, utilization, and disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter;

(4) construct, improve, operate, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter;

(5) take over, by purchase, lease, or otherwise, and administer any soil conservation, flood prevention, drainage, irrigation, water management, erosion control, or erosion prevention project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies or by this state or any of its agencies; manage, as agent of the United States or any of its agencies or of this state or any of its agencies, any soil conservation, flood prevention, drainage, irrigation, water management, erosion control, or erosion prevention project, or combination thereof, within its

boundaries; act as agent for the United States or any of its agencies or for this state or any of its agencies in connection with the acquisition, construction, operation, or administration of any soil conservation, flood prevention, drainage, irrigation, water management, erosion control, or erosion prevention projects, or combination thereof, within its boundaries; accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States or any of its agencies or from this state or any of its agencies and use or expend such moneys, services, materials, or other contributions in carrying on its operations.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(2) thru (4), (7), (9).

76-15-404. Acquisition and management of property. (1) A conservation district and the supervisors thereof shall have the power to obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise any property (real or personal) or rights or interests therein; to maintain, administer, and improve any properties acquired; to receive income from such properties; to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.

(2) All such property shall be exempt from taxation by the state or any political subdivision thereof.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(5).

76-15-405. Limitation on acquisition, operation, or disposition of property. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(B).

76-15-406. Furnishing of supplies and equipment. A conservation district and the supervisors thereof shall have the power to make available to land occupiers within the district, on such terms as it shall prescribe, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, and disposal of water.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(6).

76-15-407. Selection and acquisition of water storage sites. (1) Each conservation district within the state shall seek and may select at least one off-stream water storage site for the construction of a reservoir.

(2) If funding is available for a reservoir or other reclamation project, the conservation district shall acquire the site by purchase.

(3) Supervisors of conservation districts may designate sites for future construction of reservoirs. The supervisors shall designate such site by filing a legal description thereof in the office of the clerk and recorder of the county in which the site is located or the counties in which the site is located if it extends across the boundaries of two or more counties. Upon filing of such designation, the state of Montana, its agencies, or political subdivisions may not acquire the properties so designated for public purposes other than reservoir sites and may not construct any public facilities except reservoirs. Supervisors may cancel a site designation by filing notice with the clerk and recorder of the county or counties affected.

History: En. 76-118 by Sec. 1, Ch. 418, L. 1977; R.C.M. 1947, 76-118.

76-15-408. Funding of storage reservoirs. Each district shall seek funding for the construction of off-stream storage reservoirs, especially funding from the renewable resource fund. The department of natural resources and conservation shall provide assistance, both administrative and technical, in the preparation of grant and funding applications by the districts.

History: En. 76-119 by Sec. 2, Ch. 418, L. 1977; R.C.M. 1947, 76-119.

76-15-409. Purposes of off-stream storage. The reservoirs shall provide water storage for appropriators within the conservation district and shall provide water for additional beneficial uses. The reservoir may be part of a federal reclamation project and may be used to provide flood control in the district.

History: En. 76-120 by Sec. 3, Ch. 418, L. 1977; R.C.M. 1947, 76-120.

76-15-410. Disposition of excess water. (1) The conservation district may dispose of water in excess of that needed to meet the requirements of prior appropriators by selling the excess water to any person who will apply the water to an agreed beneficial use within the state.

(2) In making sales under this section, the district shall allocate water on the basis of priorities established by each local district in accordance with 76-15-701 through 76-15-707 according to need and beneficial use.

History: En. 76-121 by Sec. 4, Ch. 418, L. 1977; R.C.M. 1947, 76-121.

76-15-411. Conditions to extend benefits to nonstate lands. As a condition to the extending of any benefits under this chapter to or the performance of work upon any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(11).

Part 5

Financial Aspects of Conservation Districts

76-15-501. Financial management. A conservation district and the supervisors thereof shall have the power to:

(1) borrow money and incur indebtedness and issue bonds or other evidence of such indebtedness;

(2) also refund or retire an indebtedness or lien that may exist against the district or property thereof;

(3) fix and revise as necessary and collect rates, fees, tolls, rents, or other charges for the use of or for services, facilities, and materials furnished or provided, and revenues from these sources may be expended in carrying out the purposes and provisions of this chapter;

(4) cause taxes to be levied in the same manner provided for in this part for the purpose of paying any obligation of the district and to accomplish the purposes of this chapter in the manner herein provided;

(5) apply for and receive federal revenue sharing funds in order to carry out the purposes and provisions of this chapter.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(12) thru (15).

76-15-502. Allocation of state funds among districts. (1) Unless otherwise provided by law, all money which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of conservation districts shall be allocated by the department among the districts already organized or to be organized during the ensuing biennial fiscal period in accordance with the procedure specified in subsections (2) and (3) of this section.

(2) (a) Seventy-five percent of all money which may be appropriated to pay the administrative and other expenses of conservation districts shall be allocated by the department among all the districts organized or to be organized within the ensuing biennial fiscal period under this chapter in direct proportion to the total acreage of land within each district.

(b) The remaining 25% of the money shall be allocated by the department among the districts on such basis of allocation as is fair, reasonable, and in the public interest, giving due consideration to the greater relative expense of carrying on operations within the particular districts because of such factors as unusual topography, unusual severity of erosion, special difficulty of carrying on operations, special volume of work to be done, and the special importance of instituting erosion control operations immediately.

(3) In making allocations of the money, the department shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with this section and 76-15-503 and 76-15-504 from time to time among districts which may be organized after the initial allocations are made but within the ensuing biennial fiscal period.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(part).

76-15-503. Permissible uses of state money. All money allocated to a district by the department shall be available to the supervisors of the district for all administrative and other expenses of the district under this chapter and for all administrative and other expenses of the board of adjustment established or to be established by the district.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(part).

76-15-504. Submission of budget to department of administration. (1) The department shall submit to the department of administration a request for an appropriation as provided in the budget act on or before August 1 of each year preceding a regular session of the legislature.

(2) The request for an appropriation shall state in addition to the requirements of the budget act the following:

(a) the number and acreages of districts in existence or in process of organization, together with an estimate of the number and probable acreages of the districts which may be organized during the ensuing biennial fiscal period;

(b) a statement of the balance of funds, if any, available to the department and to the districts; and

(c) the estimates of the department as to the sums needed for its administrative and other expenses and for allocation among the several districts during the ensuing biennial fiscal period.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(3).

76-15-505. Authorization to borrow money — limitations. (1) If, after the levy of the annual assessments for the current year, the board finds that, because of some unusual or unforeseen cause, funds raised through the collection of the assessments and from other sources will not be sufficient for the proper maintenance and operation of the district and the works therein, the board may:

(a) borrow additional funds needed to an amount not to exceed 50 cents per acre for the lands within the district and may pledge the credit of the district for the payment of the same; or

(b) request the county commissioners to issue and register warrants in anticipation of further collections.

(2) The board shall include in the levy for the ensuing year the amount required to pay the loan or to retire the warrants. The warrants shall not exceed 90% of the assessment for the year.

History: En. Sec. 12, Ch. 291, L. 1969; R.C.M. 1947, 76-220.

76-15-506. Bonds authorized — election. (1) Whenever a board of supervisors deems it necessary, it may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided for by this part and part 6 for the cost of works.

(2) The board of supervisors may call a special election to vote upon the proposition of issuing the bonds or may submit the proposition as a special question at a regular or general election. If from the returns of the election it appears that the majority of votes cast at such election was in favor of and assented to the incurring of the indebtedness, then the board of supervisors may by resolution provide for the issuance of such bonds.

(3) The authorization of such undertaking, the form, and content shall be carried out in accordance with 7-7-4426, 7-7-4427, and 7-7-4432 through 7-7-4435. Validity of such bonds, use of revenue, and refunding shall be in accordance with the provisions of 7-7-4425, 7-7-4430, 7-7-4501 (2) and (3), and 7-7-4502 through 7-7-4505.

(4) Any bonds issued under this part and part 6 have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: **En. Sec. 15, Ch. 291, L. 1969; amd. Sec. 19, Ch. 431, L. 1971; R.C.M. 1947, 76-223; amd. Sec. 394, Ch. 571, L. 1979.**

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

76-15-507. Investment of funds. The board of supervisors shall have the power and authority to direct the investment of funds in a sinking fund in interest-bearing securities whenever in their judgment the same may be to the best interests of the district. But all such securities shall be converted into cash in time to meet the principal on the bonds payable from such sinking fund promptly at their maturity.

History: **En. Sec. 13, Ch. 291, L. 1969; R.C.M. 1947, 76-221.**

76-15-508. Management of surplus funds. The board of supervisors of a conservation district may invest any surplus funds of the district, except county tax funds, not needed for immediate use in the operations of the district or its activities, to pay bonds or coupons, or to meet current expenses in interest-bearing bonds or securities of the United States or of any agency of the United States if the bonds are guaranteed by the United States or in bonds of the state of Montana or any county or municipal corporation in said state. The board of supervisors of said district may require any funds of the district to be deposited with such depository or bank as may be designated by the board and likewise shall have authority to require the treasurer of the district to take from such depository a bond with corporate surety to ensure payment of any such deposit or to require such depository to pledge securities of the same kind as the district is authorized to invest its funds in to ensure payment of any such deposit.

History: **En. Sec. 14, Ch. 291, L. 1969; amd. Sec. 18, Ch. 431, L. 1971; R.C.M. 1947, 76-222.**

76-15-509 and 76-15-510 reserved.

76-15-511. Estimate of money to be raised by assessment. The supervisors of the district shall on or before the first Monday of July of each year furnish the board of county commissioners an estimate in writing of the amount of money to be raised by assessment which is needed for the next ensuing fiscal year.

History: **En. Sec. 4, Ch. 253, L. 1963; amd. Sec. 2, Ch. 152, L. 1965; R.C.M. 1947, 76-204.**

76-15-512. Expenses to be covered by estimate. The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district.

History: **En. Sec. 6, Ch. 253, L. 1963; amd. Sec. 5, Ch. 291, L. 1969; R.C.M. 1947, 76-206.**

76-15-513. Division between counties of money to be raised by regular and special assessment. (1) If the district lies in more than one county, the supervisors of the district shall divide the amount of the estimate of the regular assessment in the proportion to the value of the land in the district lying in each county. The value shall be determined from the last assessment rolls of the counties. The supervisors shall furnish the boards of county commissioners of each of the respective counties a statement of the part of the estimate apportioned to the county.

(2) The estimates of the special assessments shall be divided in proportion to the value of land lying within the project area.

History: En. Sec. 5, Ch. 253, L. 1963; amd. Sec. 4, Ch. 291, L. 1969; R.C.M. 1947, 76-205.

76-15-514. Regular and special assessments. Assessments levied pursuant to this part and part 6 shall be known as regular and special assessments.

History: En. Sec. 7, Ch. 253, L. 1963; amd. Sec. 6, Ch. 291, L. 1969; R.C.M. 1947, 76-207.

76-15-515. Maximum regular assessment. The regular assessment in any one year shall not exceed 1 ½ mills on the dollar of total taxable valuation of real property within the district, except that cities that voted to be included in a district prior to July 1, 1971, shall be excluded from the district by a majority vote of the council. The valuation shall be determined according to the last assessment roll.

History: En. Sec. 8, Ch. 253, L. 1963; amd. Sec. 3, Ch. 152, L. 1965; amd. Sec. 7, Ch. 291, L. 1969; amd. Sec. 15, Ch. 431, L. 1971; R.C.M. 1947, 76-208.

76-15-516. Levy of regular and special assessment. (1) The board of county commissioners of each county in which there lies any portion of the district may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district, except that cities that voted to be included in a district prior to July 1, 1971, shall be excluded from the district by a majority vote of the council. It shall be known as the ".... (name of district) conservation district regular assessment" and shall be sufficient to raise the amount reported to them in the estimate of the supervisors.

(2) The board of county commissioners of each county in which there lies any portion of a project area may, annually at the time of levying county taxes, levy an assessment not to exceed 3 mills on the taxable real property within the project area. It shall be known as ".... (name of the project area) special assessment" and shall be sufficient to raise the amount reported to them in the estimate of the supervisors.

History: En. Sec. 9, Ch. 253, L. 1963; amd. Sec. 4, Ch. 152, L. 1965; amd. Sec. 8, Ch. 291, L. 1969; amd. Sec. 16, Ch. 431, L. 1971; R.C.M. 1947, 76-209.

76-15-517. Computation of rate of assessment. The board of county commissioners shall determine the rate of assessment by deducting 15% for anticipated delinquencies from the total assessed value of the taxable real property in the district, except that cities that voted to be included in a district prior to July 1, 1971, shall be excluded from the district by a majority vote of the council, and then dividing the sum required to be raised by the remainder of the total assessed value. If a fraction of a cent occurs in a valuation of $100, it shall be taken as a full cent.

History: En. Sec. 10, Ch. 253, L. 1963; amd. Sec. 5, Ch. 152, L. 1965; amd. Sec. 9, Ch. 291, L. 1969; amd. Sec. 17, Ch. 431, L. 1971; R.C.M. 1947, 76-210.

76-15-518. Certification of assessment to assessor — entry on assessment roll. The board of county commissioners of each county in which any portion of the district is situated may levy the assessment provided in this part or part 6. The assessment shall be certified to the county assessor of each of the respective counties and entered on the assessment roll.

History: **En. Sec. 11, Ch. 253, L. 1963; R.C.M. 1947, 76-211.**

76-15-519. Application of general law on levy and collection. The provisions of law relating to the levy and collection of county taxes and the duties of county officers with respect thereto, insofar as they are applicable and not in conflict with this part and part 6, are hereby adopted and made a part hereof.

History: **En. Sec. 12, Ch. 253, L. 1963; R.C.M. 1947, 76-212(part).**

76-15-520. Liability of county officers. The county officers referred to in 76-15-519 are liable on their several official bonds for the faithful discharge of their duties under this part and part 6.

History: **En. Sec. 12, Ch. 253, L. 1963; R.C.M. 1947, 76-212(part).**

76-15-521. Principal county defined. "Principal county" as used in this part means the county in which all or the greatest portion of the land of a district is situated. The principal county remains the same regardless of any change in boundaries.

History: **En. Sec. 13, Ch. 253, L. 1963; R.C.M. 1947, 76-213.**

76-15-522. Settlements by county treasurers other than of principal county. The treasurers of each of the counties other than the principal county shall, not less than twice a year or upon order of the supervisors of the district, settle with such supervisors and pay to the treasurer of the principal county all money belonging to the district and in their possession.

History: **En. Sec. 14, Ch. 253, L. 1963; R.C.M. 1947, 76-214.**

76-15-523. Depository of district funds. The treasury of the principal county is the depository of all of the county tax funds of the district.

History: **En. Sec. 15, Ch. 253, L. 1963; amd. Sec. 10, Ch. 291, L. 1969; R.C.M. 1947, 76-215.**

76-15-524. Receipt and crediting of district funds — responsibility on bond. The treasurer of the principal county shall receive and receipt for all county tax money of the district and place the same to the credit of the district. He is responsible on his official bond for the safekeeping and disbursement, in the manner provided in this part and part 6, of the money of the district held by him.

History: **En. Sec. 16, Ch. 253, L. 1963; amd. Sec. 11, Ch. 291, L. 1969; R.C.M. 1947, 76-216.**

76-15-525. Payment of district money — warrants. The treasurer of the principal county shall pay out money of the district only upon warrants of the county auditor or, in those counties not having an auditor, the county clerk and recorder, drawn upon order of the supervisors of the district and signed by at least two of such supervisors.

History: **En. Sec. 17, Ch. 253, L. 1963; R.C.M. 1947, 76-217.**

76-15-526. Treasurer's reports. The treasurer shall report in writing at each regular meeting of the supervisors and as often at other times as the supervisors may request the amount of money on hand and the receipts and disbursements since his last report. Such report shall be verified.

History: En. Sec. 18, Ch. 253, L. 1963; R.C.M. 1947, 76-218.

76-15-527. Purpose of expenditures. All money collected under 76-15-511 through 76-15-526 shall be expended for the purposes provided in 76-15-502 and 76-15-503.

History: En. Sec. 19, Ch. 253, L. 1963; R.C.M. 1947, 76-219.

76-15-528. Lien for special assessments. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this chapter, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien against the property upon which such assessment is levied from the date on which such assessment is levied. This lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

History: En. Sec. 23, Ch. 291, L. 1969; R.C.M. 1947, 76-231; amd. Sec. 19, Ch. 266, L. 1979.

76-15-529. Assessments unaffected by misnomers and mistakes relating to ownership. When under the provisions of this part and part 6 special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

History: En. Sec. 24, Ch. 291, L. 1969; R.C.M. 1947, 76-232.

Part 6

Project Areas

76-15-601. Establishment of project areas — special assessments. Whenever the public interest or convenience may require and upon the petition of a county, city, town, cooperative grazing association, or other special purpose district or by more than 50% of the qualified electors affected thereby, the board of supervisors is hereby authorized and empowered to establish project areas for carrying out projects to accomplish one or more of the purposes of the district and within which area special assessments can be made for carrying out project purposes.

History: En. Sec. 16, Ch. 291, L. 1969; amd. Sec. 20, Ch. 431, L. 1971; R.C.M. 1947, 76-224.

76-15-602. Hearing on petition to establish project area. Upon receipt of a petition to establish a project area, the board or boards of supervisors shall cause due notice to be given of a public hearing on the petition.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-603. Investigation of need for project area. Prior to the hearing, the board or boards of supervisors shall make or cause to be made an investigation of the need for establishment of the proposed project area and shall prepare a report of their findings.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-604. Protest procedure. At any time within 15 days after the date of the last publication of the notice of the hearing on the petition, any owner of property liable to be assessed for the project may protest against the proposed project or the creation of the project area, or both. The protest must be in writing and be delivered to the secretary of the conservation district who shall endorse thereon the date of its receipt by him.

History: En. Sec. 18, Ch. 291, L. 1969; amd. Sec. 22, Ch. 431, L. 1971; R.C.M. 1947, 76-226(part).

76-15-605. Board decision. (1) The report of 76-15-603 shall be presented and read at the hearing on the petition.

(2) At the public hearing on the petition, the board of supervisors shall proceed to hear and pass upon all protests made and its decision shall be final and conclusive except when owners of more than 50% of the land in the proposed project area protest the project. If owners of more than 50% of the land protest the project, no further action may be taken for a period of 6 months from the date of the hearing, after which a new petition may be filed.

(3) If the board or boards of supervisors find that it is not feasible, desirable, or practical to establish the proposed project area, they shall make an order denying the petition and shall state therein their reasons for so doing.

(4) If, however, the board finds that the project is desirable, proper, and necessary, it shall grant the petition, establish the boundaries of the proposed project area, and notify the county election administrator that an election is to be held in the proposed area for the purpose of determining whether or not the project area shall be created.

History: En. Secs. 17, 18, Ch. 291, L. 1969; amd. Secs. 21, 22, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part), 76-226(part); amd. Sec. 395, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

76-15-606. Election procedure. (1) The question shall be submitted to the electors by ballot on which the words "For creation of proposed project area" and "Against creation of proposed project area" shall appear, with a square before each proposition and directions to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose creation of the project area.

(2) No person shall be entitled to vote at the election unless such person possesses all the qualifications required of electors under Title 13 and resides within the boundaries of the proposed project area and the county in which he proposes to vote.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-607. Notice of creation of project area. If the majority of the votes cast at the election are in favor of creating a project area, the board or boards of supervisors shall create the project area and shall file with the county clerk and recorder in each county in which there lies a portion of the project area a notice of creation of the project area setting forth the purposes of the area and the boundaries thereof.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-608. Description of work or project area. In all resolutions, notices, orders, and determinations, it shall be sufficient to briefly describe the work or the project area or both.

History: En. Sec. 19, Ch. 291, L. 1969; R.C.M. 1947, 76-227.

76-15-609. Area included in project area. A project area may include a part or all of any district or may include areas in more than one district.

History: En. Sec. 20, Ch. 291, L. 1969; R.C.M. 1947, 76-228(part).

76-15-610. Administration of project area. The affairs of a project area shall be administered by the board or boards of supervisors or their authorized agents.

History: En. Sec. 20, Ch. 291, L. 1969; R.C.M. 1947, 76-228(part).

76-15-611. Federal authority unaffected. (1) The provisions of this part do not apply to the government of the United States or any department, bureau, or agency thereof, except to such extent as the government of the United States or any department, bureau, or agency thereof may desire to take advantage of its provisions. It is an express purpose and intent of this part to aid but not to interfere with the government of the United States or any department, bureau, or agency thereof in any undertaking over which such federal authority desires to exercise full supervision and control.

(2) The provisions of this part may not be construed to impair, limit, or repeal any right whatsoever which the government of the United States or any department, bureau, or agency thereof has to full and complete jurisdiction, management, or control over projects over which such federal authority desires to exercise such rights. It is a purpose of this part expressly to subordinate any power of jurisdiction and to never interfere directly with such federal authority.

History: En. Sec. 22, Ch. 291, L. 1969; R.C.M. 1947, 76-230; amd. Sec. 20, Ch. 266, L. 1979.

76-15-612. Duty to maintain improvements. Whenever any project petitioned for or created by the state or federal government has been made, built, constructed, erected, or accomplished as provided in this part, it is hereby made the duty of the board or boards of supervisors under whose jurisdiction the project area was created to adequately and suitably maintain and preserve said improvements and fully to keep the same in proper repair and operation by contract or otherwise in the way or manner as the board shall deem suitable and proper.

History: En. Sec. 25, Ch. 291, L. 1969; R.C.M. 1947, 76-233.

76-15-613 through 76-15-620 reserved.

76-15-621. Estimate of expenses of project area. (1) When a project area has been created, the board or boards of supervisors shall estimate the expenses of the project area from the date of its establishment until the end of the ensuing fiscal year and before July 1 in each year thereafter shall estimate project area expenses for the fiscal year ensuing.

(2) Estimates of project area expenses may include revenue needed to pay the interest or principal of any bonded debt, costs of rights-of-way, easements, or other interest in property deemed necessary for the construction, operation, and maintenance of any projects therein.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-622. Financing of project area expenses. (1) The expense of the project area may, in the discretion of the board or boards of supervisors, be financed in whole from revenue received by regular assessments or by revenue received in part from regular assessments and in part from special assessments.

(2) Upon adoption of a budget covering necessary expenses, the board or boards of supervisors shall send a copy of such budget or apportionment thereof to the board of county commissioners of each county in the project area and the city auditor of each city in the project area.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-623. Administration of special assessment. (1) When the board or boards of supervisors have determined that a special assessment is necessary, the board of county commissioners of such county in which there lies any portion of a project area shall annually at the time of levying county taxes levy a special assessment of the taxable real property in the project area, not to exceed 3 mills. It shall be known as the "....(name of district) soil and water conservation district special assessment" and shall be sufficient to raise the income reported to it in the estimate of the supervisors.

(2) Each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all the lands to be assessed.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-624. Disposition of funds — insufficient revenue. (1) Funds produced each year by this special tax levy shall be available until spent.

(2) If this special tax levy in any year does not produce sufficient revenue to pay the project area expenses, a fund sufficient to pay the same may be accumulated.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-625. Limitation on special assessment. A special assessment to defray the expenses of a project area may be spread over a term of not to exceed 40 years.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

Part 7

Land Use Regulations

76-15-701. Adoption of land use regulations. (1) The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and water resources and preventing and controlling erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work.

(2) The supervisors shall not have authority to enact such land use regulations into law until after they shall have caused due notice to be given of their intention to order a referendum for submission of such regulations to the qualified electors within the boundaries of the district for their indication of approval or disapproval of such proposed regulations and until after the supervisors have considered the result of such referendum.

History: **En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(A); amd. Sec. 396, Ch. 571, L. 1979.**

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

76-15-702. Referendum on proposed land use regulations. (1) The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum.

(2) The notices of the referendum shall recite the contents of such proposed ordinance or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots upon which the words "For approval of proposed ordinance No ...., prescribing land use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No ...., prescribing land use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance.

(3) The supervisors shall publish the result of the referendum. All registered electors within the district shall be eligible to vote in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

History: **En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(B); amd. Sec. 397, Ch. 571, L. 1979.**

76-15-703. Voter approval of proposed regulations required. The supervisors shall not have authority to enact such proposed ordinance into law unless a majority of the votes cast in such referendum shall have been cast for approval of the proposed ordinance. The approval of the proposed ordinance by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law.

History: **En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).**

76-15-704. Regulations to have force of law. Land use regulations prescribed in ordinances adopted pursuant to the provisions of 76-15-701 through 76-15-707 by the supervisors of any district shall have the force and effect of law in the district and shall be binding and obligatory upon all occupiers of lands within such district.

History: **En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).**

76-15-705. Alteration of regulations. (1) Any qualified elector within such district may at any time file a petition with the supervisors asking that any or all of the land use regulations prescribed in any ordinance adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 be amended, supplemented, or repealed.

(2) Land use regulations prescribed in any ordinance adopted pursuant to the provisions of 76-15-701 through 76-15-707 shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in 76-15-701 through 76-15-707 for adoption of land use regulations.

(3) Referenda on adoption, amendment, supplementation, or repeal of land use regulations shall not be held more often than once in 6 months.

History: **En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).**

76-15-706. Contents of land use regulations. (1) The regulations to be adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 may include:

(a) provisions requiring the carrying out of necessary engineering operations, including the construction of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, fences, and other necessary structures;

(b) provisions requiring observance of particular methods of cultivation or grazing, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water conserving and erosion preventing plants, trees, and grasses, forestation and reforestation;

(c) specifications of cropping and range programs and tillage and grazing practices to be observed;

(d) provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

(e) provisions for such other means, measures, operations, and programs as may assist conservation of soil and water resources and prevent or control erosion in the district, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion, threatened or existing, grazing and cropping programs, tillage and range practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type.

History: **En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).**

76-15-707. Publication of regulations. Copies of land use regulations adopted under the provisions of 76-15-701 through 76-15-707 shall be printed and made available to all occupiers of land within the district.

History: **En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).**

76-15-708. Power to determine compliance with regulations. After a complaint shall have been filed with the supervisors charging a violation of the regulations, the supervisors shall have authority to go upon any lands within the district to determine whether land use regulations adopted under the provisions of 76-15-701 through 76-15-707 are being observed.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(1).

76-15-709. Enforcement of regulations — petition to district court. Where the supervisors of any district shall find that any of the provisions of land use regulations prescribed in any ordinance adopted in accordance with the provisions of 76-15-701 through 76-15-707 are not being observed on particular lands and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present a petition, duly verified, to the district court of the county in which the lands of the defendant may lie:

(1) setting forth:

(a) the adoption of the ordinance prescribing land use regulations;

(b) the failure of the defendant to observe such regulations and to perform particular work, operations, or avoidances as required thereby; and

(c) that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district; and

(2) praying the court:

(a) to require the defendant to perform the work, operations, or avoidances within a reasonable time; and

(b) to order that, if the defendant shall fail so to perform, the supervisors may go on the land, perform the work or other operations, or otherwise bring the condition of such lands into conformity with the requirements of such regulations and recover the costs and expenses thereof, with interest, from the defendant.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(2).

76-15-710. Court procedure after petition is filed. (1) Upon the presentation of such petition, the court shall cause process to be issued against the defendant and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(2) In all cases where the person in possession of lands who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

(3) The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances and may provide that, upon the failure of the defendant to initiate such performance within the time specified in the order of the court and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such

land into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of 5% a year, from the defendant.

(4) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court, the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of 5% a year until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(3) thru (5).

76-15-711 through 76-15-720 reserved.

76-15-721. Board of adjustment. (1) Where the supervisors of a district adopt an ordinance prescribing land use regulations in accordance with 76-15-701 through 76-15-707, they shall further provide by ordinance for the establishment of a board of adjustment.

(2) The board of adjustment shall consist of three members, each to be appointed for a term of 3 years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively.

(3) The members of each board of adjustment shall be appointed by the department with the advice and approval of the supervisors of the district for which the board has been established and may be removed by the department, upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason, the hearing to be conducted jointly by the department and the supervisors of the district. Members of the board of natural resources and conservation, employees of the department, and the supervisors of the district are ineligible to appointment as members of the board of adjustment.

(4) Vacancies in the board of adjustment shall be filled in the same manner as original appointments and shall be for the unexpired term of the member whose term becomes vacant.

(5) The members of the board of adjustment shall receive compensation for their services at the rate of $4 per day for time spent on the work of the board in addition to expenses, including travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the chairman of the board.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(1).

76-15-722. Operation of board of adjustment. (1) The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with this chapter and with the ordinance establishing the board of adjustment.

(2) The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two members of the board constitute a quorum. The chairman or in his absence such other member of the board as he may designate to serve as acting chairman may administer oaths and compel the attendance of witnesses.

(3) All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(2); amd. Sec. 21, Ch. 266, L. 1979.

76-15-723. Petition for a variance. (1) Any qualified elector may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land use regulations prescribed by ordinance approved by the supervisors and praying the board to authorize a variance from the terms of the land use regulations in the application of the regulations to the lands occupied by the petitioner.

(2) Copies of the petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the department.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

76-15-724. Hearing on petition for a variance. (1) The board of adjustment shall fix a time for the hearing of the petition and cause due notice of the hearing to be given.

(2) The supervisors of the district and the department are entitled to appear and be heard at the hearing. A qualified elector within the district who objects to the authorizing of the variance prayed for may intervene and become a party to the proceedings. A party to the hearing before the board may appear in person, by agent, or by attorney.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

76-15-725. Board decision. (1) If, upon the facts presented at the hearing, the board determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship.

(2) Upon the basis of the findings and determination, the board may order a variance from the terms of the land use regulations in their application to the lands of the petitioner that will relieve the great practical difficulties or unnecessary hardship; will not be contrary to the public interest; and will be such that the spirit of the land use regulations is observed, the public health, safety, and welfare is secured, and substantial justice is done.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 22, Ch. 266, L. 1979.

76-15-726. Appeal to district court from board decision. (1) A petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought; the supervisors of the district; or an intervening party may obtain a review of the order in any district court of the county in which the lands of the petitioner lie by filing in the court a petition praying that the order of the board be modified or set aside.

(2) A copy of the petition shall immediately be served upon the parties to the hearing before the board, and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered and the findings, determination, and order of the board.

History: **En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).**

76-15-727. Court proceedings. (1) Upon the filing, the court shall cause notice thereof to be served upon the parties, and the court has jurisdiction of the proceedings and of the questions determined or to be determined therein and may grant such temporary relief as it deems just and proper and make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the board.

(2) A contention that is not urged before the board may not be considered by the court unless the failure or neglect to urge the contention is excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, are conclusive.

(3) If a party applies to the court for leave to produce additional evidence and shows to the satisfaction of the court that the evidence is material and that there are reasonable grounds for the failure to produce the evidence in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file the modified or new findings which, if supported by evidence, are conclusive and shall file with the court its recommendations, if any, for the modification or setting aside of its original order.

(4) The jurisdiction of the court is exclusive and its judgment and decree are final, except that they are subject to review in the same manner as are other judgments or decrees of the court.

History: **En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).**

Part 8

Alteration and Termination of Conservation Districts

76-15-801. Change of district name. Petitions for changing the name of a district organized under this chapter may be filed with the department. The petition shall be signed by a majority of the district supervisors and shall state the present name of the district and the proposed new name.

If the department determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty, it shall present a statement of that determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district. Upon the issuance of the certificate, the supervisors of the district shall cause due notice to be given of the change of the name of the district.

History: **En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974; R.C.M. 1947, 76-117(1).**

76-15-802. Procedure to add territory to a district. Petitions for including additional territory within an existing district may be filed with the department, and the proceedings provided for in part 2 in the case of petitions to organize a district shall be followed in the case of petitions for the inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as may be in the form prescribed in part 2 for petitions to organize a district. Where the total number of qualified electors in the area proposed for inclusion is less than 10, the petition may be filed when signed by a majority of the qualified electors of the area, and in that case no referendum need be held. In referenda upon petitions for the inclusion, all qualified electors within the proposed additional area are eligible to vote.

History: **En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(10).**

76-15-803. Combination or division of districts. (1) A petition may be filed with the department for the division of any district or the combination of any two or more districts or for the division of a district and the combination of any divided part thereof with any other district. Any or all of these actions may be initiated by the filing of a single petition with the department. The petition shall be signed by a majority of the members of each of the governing bodies of the affected districts. The department shall prescribe the form for the petition. Upon the filing of the petition, the department shall within 30 days give due notice of public hearing upon the petition. All qualified electors within the affected districts and all other interested parties are entitled to attend the hearing and be heard. After the hearing, the board of natural resources and conservation upon the record of the hearing shall determine whether the proposed division, the combination, or division and combination of territory is administratively practicable and feasible. In making the determination the board shall give due regard to the legislative determinations set forth in 76-15-101 and 76-15-102 and to the considerations enumerated in 76-15-201 through 76-15-216, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(2) If the board determines that the proposed division, combination, or division and combination is administratively practicable and feasible, the board shall effect the proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of the districts. If the determination is in the negative, the board shall make and record that determination and shall deny the petition. After 6 months from the denial of the petition, a new petition may be filed.

(3) Upon the division of a district, the supervisors thereof shall allocate the property, rights, and liabilities (including contractual obligations) of the district among the resulting parts of the district, giving due consideration to the proportionate size of each divided part, the number of qualified electors and operating units, the degree and extent of soil erosion therein, and other relevant factors. A statement of the allocation shall be filed with the department within 30 days after the notification of the board's determination in favor of the division of the district. Upon the failure of the supervisors to make or to agree upon the allocation, it shall be made by the department after such hearing as the department considers necessary and with due regard for the standards set out in this subsection for making the allocations.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974; R.C.M. 1947, 76-117(2) thru (4).

76-15-804. Petition to discontinue all or part of a district. (1) At any time after 5 years after the organization of a district under this chapter, any 10 qualified electors within the boundaries of the district may file a petition with the department praying that the board terminate the operations of the district or a part of the district and discontinue the existence of the district or that part of the district.

(2) The department may conduct such public meetings and public hearings upon the petition as are necessary to assist it and the board in the consideration thereof.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(1).

76-15-805. Referendum on question of discontinuance. (1) Within 60 days after the petition has been received by the department, it shall give due notice of the holding of a referendum and shall supervise the referendum and issue appropriate regulations governing the conduct thereof. The question is to be submitted by ballots upon which the words "For terminating the existence of the .... (name of the conservation district or part of the district to be here inserted)" and "Against terminating the existence of the .... (name of the conservation district or part of the district to be here inserted)" shall appear with the square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose discontinuance of the district or a part of the district.

(2) All qualified electors within the boundaries of the district are eligible to vote in the referendum. No informalities in the conduct of the referendum or in any matters relative thereto shall invalidate the referendum or the result thereof if notice thereof is given substantially as herein provided and the referendum is fairly conducted.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(2).

76-15-806. Board decision in case of petition for discontinuance of entire district. (1) In the case of petitions for discontinuance of a district, the department shall publish the result of the referendum and the board shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the board determines that the continued operation of the district is administratively practicable and feasible, it shall record that determination and deny the petition.

(3) If the board determines that the continued operation of the district is not administratively practicable and feasible, it shall record that determination and shall certify the determination to the supervisors of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(3)(a).

76-15-807. Board decision in case of petition for discontinuance of portion of district. (1) In the case of petitions for discontinuance of part of a district, the department shall publish the result of the referendum and the board shall thereafter consider and determine whether the continued operation of a part of the district within the defined boundaries is administratively practicable and feasible.

(2) If the board determines that the continued operation of the district is not administratively practicable and feasible with a part of the district discontinued, it shall record that determination and deny the petition.

(3) If the board determines that the continued operation of the district is administratively practicable and feasible with a part of the district discontinued, it shall record that determination and shall certify the determination to the supervisors of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(3)(b).

76-15-808. Criteria for board decision on discontinuance. (1) In making the determination, the board shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the discontinuance of the district or part of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within the district, and such other economic and social factors as may be relevant to the determination, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) However, the board may not determine that the continued operation of the district or part of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum are cast in favor of the continuance of the district or part of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(4).

76-15-809. Procedure to terminate district. (1) Upon receipt from the department of a certification of the board that the board has determined that the continued operation of the district or part of the district is not administratively practicable and feasible, pursuant to 76-15-804 through 76-15-810, the supervisors shall immediately proceed to terminate the affairs of the district or part of the district.

(2) The supervisors shall dispose of all property belonging to the district or part of the district at public auction and shall pay over the proceeds of the sale to be covered into the state treasury.

(3) The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of the district or part of the district and shall transmit with the application the certificate of the board, setting forth the determination of the board that the continued operation of the district or part of the district is not administratively practicable and feasible. The application shall recite that the property of the district or part of the district has been disposed of and the proceeds paid over as provided in 76-15-804 through 76-15-810 and shall set forth a full accounting of the properties and proceeds of the sale.

(4) The secretary of state shall issue to the supervisors a certificate of dissolution and shall record the certificate in an appropriate book of record in his office.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(5).

76-15-810. Effect of termination. (1) Upon issuance of a certificate of dissolution under 76-15-809, all ordinances and regulations theretofore adopted and in force within the district or in that part of the district are void.

(2) All contracts previously entered into, to which the district or supervisors are parties, remain in effect for the period provided in those contracts. The department shall be substituted for the district or supervisors as party to the contracts if the total district is discontinued. In this case the department is entitled to all benefits and subject to all liabilities under the contracts and has the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate the contracts by mutual consent or otherwise as the supervisors of the district would have had.

(3) The dissolution does not affect the lien of any judgment entered under 76-15-708 through 76-15-710 or the pendency of an action instituted under those sections, and the department succeeds to all rights and obligations of the district or supervisors as to those liens and actions.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(6).

CHAPTER 16

GRAZING DISTRICTS

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Part 1

General Provisions

76-16-101. Short title. This chapter may be cited as the "Grass Conservation Act".

History: **En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part).**

76-16-102. Purpose. The purpose of this chapter is to provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to provide for the incorporation of cooperative nonprofit grazing districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate ranch properties as defined herein.

History: **En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part).**

76-16-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Animal unit" means one cow, one horse, or five sheep, 6 months old or over.

(2) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in 76-16-323(1) and does not include fees.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302, except where the term is used in connection with the board of directors of a state district.

(4) "Commensurate property" means land privately owned or controlled which is not range as herein defined.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Dependent commensurate property" is commensurate property which requires the use of range in connection with it to maintain its proper use and which produces or whose owner furnishes as part of his past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range and which has been used in connection with the range for a period of any 3 years or for any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945, for a 5-year period immediately preceding the date of organization of such districts.

(7) "Grazing preference" is a right to obtain a grazing permit from a state district.

(8) "Permits" are evidence of grazing privileges granted by state districts.

(9) "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.

(10) "Range" is the land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.

(11) "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors and also includes all lands owned or controlled by the state district or its members.

History: **En. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945; amd. Sec. 36, Ch. 253, L. 1974; R.C.M. 1947, 46-2302(part).**

76-16-104. Role of the department. (1) The department of natural resources and conservation shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the department of state lands and boards of county commissioners, and supervise and coordinate the formation and operation of districts which may be incorporated under this chapter.

(2) The department may act in an advisory capacity to the department of state lands and boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or without the boundaries of state districts in conformity with recognized conservation and stabilization policies.

History: **En. Secs. 1, 17, Ch. 208, L. 1939; amd. Secs. 35, 47, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part), 46-2317.**

76-16-105. Powers of the department. The department may:

(1) prepare and standardize various forms to be used by the state districts and supervise or regulate the organization and operation of state districts;

(2) issue citations directed to any person requiring his attendance before the department or the board and subpoena witnesses and pay such expenses as would be allowed in a court action;

(3) require an officer or director of a state district to submit records of the state district to the department for the purpose of aiding an investigation conducted by the department;

(4) hold hearings on any matters affecting the department;

(5) require state districts to furnish itemized financial reports annually;

(6) cooperate and enter into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter.

History: **En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part).**

76-16-106. Department fees. (1) The department may impose fees against the several state grazing districts of the state in an amount not in excess of 10 cents per animal unit, based upon the number of animal units per year for which the district grants permits, to defray expenses incurred by the department in carrying out its powers and duties under this chapter.

(2) These fees shall be held in the earmarked revenue fund to be expended by order and direction of the department for the administration of the department's functions under this chapter.

(3) If a state district fails or refuses to pay the fee on or before October 1 of each year and after the district is provided with a full report from the department of all money collected and expended by it for its fiscal year next

preceding that date, the department may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district.

History: En. Sec. 29, Ch. 208, L. 1939; amd. Sec. 1, Ch. 241, L. 1961; amd. Sec. 156, Ch. 147, L. 1963; amd. Sec. 1, Ch. 20, L. 1971; amd. Sec. 52, Ch. 253, L. 1974; R.C.M. 1947, 46-2331.

76-16-107. Range for wild game animals. In each state district a sufficient carrying capacity of range shall be reserved for the maintenance of a reasonable number of wild game animals to use the range in common with livestock grazing in the district. The department may act in an advisory capacity to the department of fish, wildlife, and parks in the protection of wildlife within the boundaries of all state districts. The department shall encourage the transfer of beaver from streams where they are doing damage to other streams where they are needed.

History: En. Sec. 30, Ch. 208, L. 1939; amd. Sec. 53, Ch. 253, L. 1974; R.C.M. 1947, 46-2332; amd. Sec. 2, Ch. 218, L. 1979.

76-16-108. Nature of rights. (1) Preferences or rights under this chapter through the creation of the district or the issuance of permits or preferences are statutory and do not create any vested right, title, interest, or estate in or to the lands owned or controlled by the district excepting as herein provided.

(2) Any person who chooses to become a member of any state district is bound by all the provisions of this chapter and is limited to the statutory remedies therein contained, and no court shall have jurisdiction to consider any right claimed under this chapter excepting only by judicial review from the final decision of the commission as herein provided.

History: (1)En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; Sec. 46-2314, R.C.M. 1947; (2)En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; Sec. 46-2308, R.C.M. 1947; R.C.M. 1947, 46-2308(part), 46-2314(3).

76-16-109. Appeal procedure. (1) Notice of a decision of a state district shall be given in writing by the secretary of the state district to the interested parties or their attorneys by registered or certified mail at the address as shown on the records of the district.

(2) A person affected by the decision of a state district may appeal therefrom to the board which shall hear and decide all those appeals. An appeal from the decision of the district to the board may be taken by filing written notice of the appeal with the department and by filing a copy of the notice of appeal with the secretary of the district and by serving a copy of the notice of appeal by registered or certified mail upon any interested parties who have appeared or their attorneys within 60 days after receiving written notice of the decision of the district. The appellant shall also file with the department proof by affidavit of the filing and service of the notice of appeal. The appeal to the board shall be taken and review thereof had upon the record of any hearing conducted and considered by the state district; however, the board may, at its discretion and for good cause shown, permit additional testimony to be submitted.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(part).

76-16-110. Administrative procedure act applicable. The Montana Administrative Procedure Act applies to this chapter.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(3).

76-16-111. What constitutes receipt of notice. In all cases where notices are given permittees under this chapter by registered or certified mail and addressed to the post-office address of the permittee as shown by the records of the state district, the notices shall be considered received by the permittee when deposited in the United States post office by the district or by the department.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(8).

Part 2

Establishment of Districts

76-16-201. Procedure to incorporate state district. (1) If three or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the department together with a plat showing the proposed boundaries of the area.

(2) The statement shall set forth the name of the proposed state district, the county or counties in which the proposed state district is located, and the names and addresses of all operators of land and livestock units within the area. The department may require any additional information it considers necessary.

(3) On receipt of the statement and plat and any additional information, the department shall fix a time and place of a hearing for approval within the district or county, which may not be less than 30 days or more than 60 days after receipt of the statement.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part).

76-16-202. Notice and hearing on question of incorporation. (1) The persons deciding to incorporate the state grazing district shall then cause notice of the hearing to be given by publishing a notice prescribed by the department once a week for 2 consecutive weeks, the first publication to be at least 30 days prior to the date of hearing, in a newspaper of general circulation in the area.

(2) The department for and on behalf of the board shall hear evidence offered in support of or in opposition to the creation of the state district and shall make a full inquiry into the advisability of its creation. The record taken upon the hearing, together with the report of the department, shall be submitted to the board.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part).

76-16-203. Certificate of approval. If the creation of the state district appears feasible, beneficial, and desirable to those who own or control more than 50% of the lands to be included in the district, the board may issue a certificate of approval.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part).

76-16-204. Articles of incorporation. (1) Upon the issuance of the certificate of approval, three or more persons who own or control commensurate property and are livestock operators within or near the proposed state district may prepare articles of incorporation and file them in the office of the secretary of state without payment of fees.

(2) The articles shall be accompanied by the certificate of approval and signed, sealed, and acknowledged. The articles, as prescribed by the department, shall substantially state the following:

(a) the name of the state district, the last four words of which shall be "cooperative state grazing district";

(b) the county or counties in which the state district is located and the place where the principal office and business of the state district will be conducted;

(c) the membership fee for each member of the state district, which may not be more than $5;

(d) the term for which the state district is incorporated, which may not exceed 40 years;

(e) the names and residences of the persons who subscribe, together with a statement that each owns or controls commensurate property and is a livestock operator within the proposed state district;

(f) the powers of the state district, which may not be inconsistent with this chapter;

(g) the officers of the state district, their principal duties, and the principal duties of the board of directors;

(h) the purpose for which the state district is incorporated.

History: En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part).

76-16-205. Issuance of certificate of incorporation. If the articles substantially comply with the requirements set forth in 76-16-204 and are accompanied by the certificate of approval, the secretary of state shall issue to the state district a certificate of incorporation.

History: En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part).

76-16-206. Amending articles of incorporation. (1) A state district may amend its articles of incorporation by a two-thirds vote of all members present at any regular or special meeting of its members and the approval of the department. The only notice of the meeting which is necessary is the notice of meetings of members as required by the bylaws of the district. The amended articles of incorporation and bylaws shall be submitted to the department for approval. Upon approval, the department shall issue a certificate of approval. The amended articles of incorporation shall be filed by the secretary of state without charge, but may not be filed unless accompanied by the certificate of approval. If the articles of incorporation are amended, the amendment shall be filed with the county clerk or clerks.

(2) Upon the filing of the amended articles with the secretary of state and the proper county clerk or clerks, the district possesses the same powers and shall be subject to the same obligations as if incorporated under this chapter.

History: En. Secs. 11, 18, Ch. 208, L. 1939; amd. Secs. 41, 48, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part), 46-2318.

76-16-207. Filing of map or plat of district. A state district shall, upon completion of its organization, file with the county clerk and recorder of each county in which its lands lie a map or plat of the external boundaries of the state district and a copy of its articles of incorporation. If the boundaries of a state district are changed and the changes are approved by the board after a hearing thereon before the department, the state district shall file with the county clerk or clerks a map or plat indicating the changed boundaries.

History: En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part).

76-16-208. Adoption of bylaws. A state district incorporated under this chapter shall within 60 days after its incorporation adopt bylaws approved by the department. The bylaws may be amended or revised with the approval of the department.

History: En. Sec. 15, Ch. 208, L. 1939; amd. Sec. 45, Ch. 253, L. 1974; R.C.M. 1947, 46-2315.

76-16-209. Alteration of district. (1) A state district may change the boundaries of the district, merge with another state district organized under this chapter, or subdivide.

(2) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the board after a hearing thereon before the department.

(3) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the board after a hearing thereon before the department.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(11).

76-16-210. Request for dissolution of district. A state district with the written consent of three-fourths of its permittee members may at any time request the board of natural resources and conservation to dissolve the state district.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part).

76-16-211. Dissolution of district by board. (1) If a state district ceases to function and it appears to the board that the reinstatement and future operation of the district is no longer feasible, beneficial, and desirable to those who own or control more than 50% of the lands included in the district, the board, after a hearing thereon and upon 30 days' notice in writing, published for 2 consecutive weeks in a newspaper of general circulation in or nearest to the district, may dissolve the district.

(2) A notice of the dissolution shall be filed by the department with the secretary of state and the clerk and recorder of the county or counties in which the district is located.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(1)(b).

76-16-212. Distribution of district assets. (1) When a hearing on the request for dissolution has been held before the department and the board's consent has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or in both. Distribution shall first be made with the approval of the department to creditors up to the amount of their claims. Distribution shall then be made with the approval of the department to permittee members upon the basis of their proportionate interest in the assets.

(2) If assets must be liquidated, the directors shall offer them for sale at public auction after publication of a notice of the sale once a week for 2 successive weeks in a newspaper of general circulation within the state district.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part).

76-16-213. Final report on dissolution proceedings. A final report of all dissolution proceedings shall be made to the department by the directors. Upon the approval of the report by the department, the board shall order the state district dissolved.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part).

Part 3

Organization, Administration, and Operation

76-16-301. Powers and duties of directors. The directors of the state district shall manage and exercise the powers of the state district subject to its bylaws and to the regulation of the department as provided in this chapter.

History: En. Sec. 13, Ch. 208, L. 1939; amd. Sec. 43, Ch. 253, L. 1974; R.C.M. 1947, 46-2313.

76-16-302. Membership in district. (1) Membership in the district is limited to persons engaged in the livestock business who own or lease forage-producing lands within or near the district, except that the agent of a person entitled to membership in the district may become a member in place of his principal.

(2) If an agent becomes a member, his qualifications for membership and his obligations to and the privileges in the district shall be measured by those his principal would have had if he had elected to become a member. An agent and his principal may not both be members of the district unless the agent has individual qualifications for membership which are separable from and independent of those of his principal.

(3) All members who possessed preferential grazing permits during the preceding grazing season or who possess such a permit at the time of voting shall be designated as permittee members.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part).

76-16-303. Voting rights. Permittee members only are entitled to vote on all issues submitted to a vote of the members. A permittee member has only one vote. Voting by proxy may not be permitted.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part).

76-16-304. Effect of transfer of land. When a member disposes of a part of the lands or leases owned by him so that another person becomes the owner of the lands or leases and acquires the right to membership, then the rights and interest involved shall be determined by the directors of the state district with the approval of the department.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(2).

76-16-305. Acquistion and disposal of property. A state district may:

(1) purchase or market livestock and livestock products and purchase supplies and equipment. These supplies may include among other things grass, grass seed, or forage, whether attached to and upon or severed from the land.

(2) acquire forage-producing lands, including agricultural lands when necessary to comply with the purposes and directives of this chapter, by lease, purchase, cooperative agreements, or otherwise, either from the United States, the state of Montana, or the county or counties in which the lands are located or from private owners. All lands to which a state district may acquire title may be disposed of by exchange, sale, or otherwise;

(3) acquire or construct fences, reservoirs, or other facilities for the care of livestock and lease or purchase lands for such purposes.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(1), (3), (5).

76-16-306. Management of grazing lands. A state district may:

(1) manage and control the use of its range and agricultural lands acquired under 76-16-305(2). This power includes the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range and may be subject to reservations, regulations, and limitations under the terms of agreements between the state district and any agency of the United States. The state district may also allot range to members or nonmembers and decrease or increase the size of permits if the range carrying capacity changes.

(2) undertake reseeding and other approved conservation and improvement practices of depleted range areas or abandoned farm lands and enter into cooperative agreements with the federal government or any other person for the reseeding or conservation and improvement practices;

(3) employ and discharge employees, riders, and other persons necessary to properly manage the state district.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(4), (8), (13); amd. Sec. 23, Ch. 266, L. 1979.

76-16-307. Requirement to lease available state lands. State land situated within the boundaries of a grazing district created under this chapter, not otherwise disposed of by the department of state lands, must be leased by the grazing district at a reasonable rental when offered for lease to the officers of the grazing district by that department. However, the officers of the grazing district may appear or submit evidence in writing before the department of state lands and show reason and cause for a change in the rental. If there is cause, the department of state lands may reappraise the land in question. The department of natural resources and conservation shall require that all state districts comply with this section.

History: En. Sec. 16, Ch. 208, L. 1939; amd. Sec. 46, Ch. 253, L. 1974; R.C.M. 1947, 46-2316.

76-16-308. Regulation of stock grazing in district. A state district may:

(1) specify the breed, quality, and number of male breeding animals which each member must furnish when stock is grazing in common in the state district;

(2) regulate the driving of stock over, across, into, or through the range and collect fees therefor;

(3) impose sanitary provisions, regulations, and practices.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(7), (12).

76-16-309. Knowledge of district boundaries responsibility of livestock owner. A person herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary lines of the district.

History: En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part).

76-16-310. Permit required to run livestock in district. (1) No owner or person in control of livestock shall permit the same to run at large or under herd within the exterior boundaries of any state district unless the owner or person in control of such livestock shall first obtain a grazing permit for same from such state district.

(2) The owner or person in control of such livestock running at large or under herd within a state district without a permit from the district or in excess of such permit shall be liable for all damages sustained thereby by any member, permittee, or state district. If any such livestock wrongfully enters upon premises within such district, the owner or person in control of such trespassing livestock, who willfully or negligently permits same to run at large within the district without first obtaining a permit therefor from the district, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not less than $10 or more than $500 and, in addition to said punishment, shall be liable for all damages sustained thereby to the party entitled thereto.

(3) This provision shall not require any person to obtain a grazing permit to graze livestock upon land owned or controlled by him within such state district if the stock so grazed is restrained from running at large within such state district and from grazing upon any other lands within the state district.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(1).

76-16-311. Control of trespassing livestock. (1) The state district or its duly authorized agent controlling the land upon which such wrongful entry is made by trespassing livestock may take into its possession such livestock and shall reasonably care for same while in its possession and may retain possession of said livestock and have a lien and claim thereon as security for payment of such damages and reasonable charges for the care of said livestock while in its possession.

(2) The state district taking up such livestock shall, within 72 hours after taking possession thereof, notify said owner, owners, or person in charge thereof by a notice in writing describing said livestock by number of animals and brands thereon, if any, the amount of damages claimed to date, and the charge per animal unit per day for caring for and feeding the same thereafter, such charges not to exceed 50 cents per animal unit per day, and describing by general description the location of the premises upon which said livestock is held and requiring such owner or owners, within 10 days after receiving said notice, to take said livestock away after making full payment of all damages and costs of said livestock.

(3) In case the parties do not agree as to the amount of damages, the state district taking up such livestock may at the expense of the owner retain a sufficient amount of such livestock to cover the amount of damages claimed by the state district. However, the owner may, upon furnishing a good and sufficient bond, conditioned for the payment to the state district of all sums, including costs that may be recovered by said state district in a civil action to foreclose its lien, have returned to him all livestock held as aforesaid, and said state district shall be liable to such owner for any loss or injury to said livestock accruing through the state district's lack of reasonable care.

(4) If the state district taking up livestock shall fail to recover in a civil action a sum equal to that offered to the state district by the owner of the livestock, the former shall bear the expense of keeping and feeding same while in its possession. Such notice may be given by personal service on the said owner, owners, or person in charge thereof, by leaving said notice at his usual place of residence with some member of his family over the age of 14 years, or by sending said notice by prepaid registered or certified mail, addressed to his last known place of residence. Said service by registered or certified mail shall be deemed complete upon the deposit of said notice in the post office.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(2), (3).

76-16-312. Impoundment of trespassing livestock. The state district or the party taking up such trespassing livestock may cause same to be impounded at any suitable place within the state district or within 5 miles from the exterior boundaries thereof, and such livestock shall be deemed legally impounded if placed in a corral or upon land enclosed by a legal fence or placed in charge of a herder or herders.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(9).

76-16-313. Release of livestock. Upon demand, the state district or its authorized agent controlling the land or party in charge of such livestock shall release and deliver possession of such livestock to the owner or person entitled thereto upon payment of damages and charges, but said payment of damages and charges shall not act as a bar to the prosecution of said person, owner, or persons in control of such livestock, as hereinbefore provided.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-314. Recovery of excess charge for damages. If the amount of damages or costs demanded by the party taking up such livestock is in excess of the actual damage and actual costs, the owner or person in charge of such livestock may pay same under protest and thereafter sue to recover the amount paid in excess of the actual damages and reasonable costs, provided suit to recover same is filed in the district court within 60 days after payment.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-315. Procedure upon inability to locate person responsible for trespassing livestock. The state district taking up such livestock (if, after due diligence to discover the owner or possessor of such livestock, such owner or possessor cannot be found or the ownership of such livestock discovered) or the party taking up such livestock (if said owner or claimant shall refuse to pay the amount of damages or charges or furnish bonds therefor, as herein provided) shall, within 10 days from the time that said livestock was taken up, deliver to the sheriff or a constable of the county in which the livestock was taken up a statement containing the information required to be given in the notice, hereinbefore set out, and in addition thereto, he shall mail, by prepaid registered or certified mail, a copy of said statement addressed to the nearest state livestock inspector.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-316. Sale of trespassing livestock. (1) Upon receipt of the statement referred to in 76-16-315, the sheriff or constable shall proceed to advertise and sell at public auction the livestock so taken up.

(2) Such livestock shall be sold on 5 days' notice posted at the courthouse of each county in which any portion of the district lies and posted in three public places in such county, one of which shall be within the district. Such sheriff may require from the state district a good and sufficient bond, conditioned that the state district has used reasonable diligence to discover the owner of such stock and to notify him in the premises and that all requirements of law on the part of the state district to be performed in the premises have been performed and indemnifying the sheriff against all liability for the sale of said livestock except as to his own failure to perform the things required of him by law.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-317. Disposition of sale proceeds. (1) The proceeds of the sale shall be applied by the sheriff, after first deducting his costs and expenses, to the discharge of the claims and the costs of the proceedings in selling the property and to the payment of the damages, claims, and costs of the party taking up such livestock, and the remainder, if any, may be paid over to the owner of such livestock, if known, and if the owner is not known, then such remainder shall be deposited with the county treasurer, who shall keep the same in a public fund to be designated state grazing district fund (giving the name of the district). A separate fund, styled as above, shall be kept by the county treasurer for each of said districts within his county. The county treasurer shall make a record of the number and type of animals sold and the brands on same, if any, the amount received for same, and the amount of deductions. The record shall be open to public inspection.

(2) Any person making claim of ownership of such livestock to the board of county commissioners at any time within 1 year from date of sale and submitting proof of ownership to such board with such claim to the satisfaction of such board shall be entitled to receive such excess received from the sale of such livestock.

(3) Any money received from the sale of any such livestock which shall not be so claimed within 1 year after such sale shall be transferred to the general fund of the county at the expiration of said period.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(7).

76-16-318. Unlawful recovery of trespassing livestock. Any person taking or rescuing from the possession of a state grazing district or an agent thereof any animal taken up and impounded pursuant to 76-16-310 through 76-16-317 shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not exceeding $200.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(10).

76-16-319. No liability for official acts. No officer, board, or employee of such officer or board or employee of any county or of any state district shall be liable for any act performed in good faith in discharging official duties under this chapter. All such acts shall be presumed to have been in good faith and in conformity with this chapter.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(8).

76-16-320. Maintenance of fences. (1) Regarding fences within the external boundaries of state districts, the cost of construction and maintenance of fence enclosing lands controlled by any member, nonmember, or state district within the external boundaries of such state district shall be borne by such member, nonmember, or state district, unless otherwise provided for in the duly approved bylaws of such state district.

(2) In the event of the adoption of provisions to the bylaws of a state district whereby the cost of construction and maintenance of fence is to be distributed proportionately among the parties affected by such cost of construction and maintenance of fence, the state district's proportionate share of such costs and maintenance shall be financed only by assessments levied by the state district against the permittee members of the district upon consent thereto by 55% of such permittee members.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(11), (12).

76-16-321. Construction of trespass and fence provisions. (1) Sections 76-16-310 through 76-16-320 shall not be interpreted to repeal or abolish any other legal remedies which a member, a permittee, or a state district may now have against trespassing livestock or the owner or persons in control thereof. The remedies provided by 76-16-310 through 76-16-320 are additional and supplemental to the remedies provided by any other laws of the state of Montana.

(2) Nothing contained in 76-16-310 through 76-16-320 shall be so construed as to restrict the right of parties to obtain injunctive relief from a court of competent jurisdiction.

History: (1)En. Sec. 8, Ch. 199, L. 1945; Sec. 46-2327, R.C.M. 1947; (2)En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; Sec. 46-2326, R.C.M. 1947; R.C.M. 1947, 46-2326(13), 46-2327.

76-16-322. Fence-out requirement. Farming lands lying within the external boundaries of a state district shall be protected by the owner or lessee to the extent of a legal fence as described in 81-4-101(1). The state district or its members shall not be liable for damages unless such farming lands are protected by a sufficient fence as described in this section.

History: En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part).

76-16-323. District finances. A state district may:

(1) fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on an animal unit basis for the purpose of acquiring lands by purchase or for the purpose of constructing improvements in the state district;

(2) set up and maintain a reasonable reserve fund;

(3) borrow money and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least 80% of the permittee members of the state district consent in writing to the borrowing and the borrowing has been approved by the department. This subsection does not confer power upon a state district to mortgage the property of the individual members of the district.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(6), (9), (10).

76-16-324. Lawsuits involving district. A state district may sue or be sued in its corporate name.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(2).

76-16-325. Compliance with department orders required. (1) If a state district or the directors of a state district fail to comply with an order of the department, the board may order a hearing thereon within the district or county and cite the directors of the district to appear before the board.

(2) If upon the hearing it appears that the directors refuse to perform the duties of their office as herein defined and as set forth in the articles of incorporation and the bylaws of the association or refuse to comply with a lawful order of the department, the directors may be summarily removed by the board from office, and thereupon the district shall elect new officers.

During the period until the election, the department may operate and manage the affairs of the state district.

(3) The expense of operating and managing the affairs of a noncomplying state district shall be paid by the noncomplying state district before it may be reinstated.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part).

Part 4

Grazing Permit System

76-16-401. Distribution of grazing preferences. When a state district is organized, grazing preferences shall be distributed in the following manner:

(1) Any member of a state district owning or controlling dependent commensurate property as heretofore defined may be given a grazing preference.

(2) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property, members owning or controlling commensurate property shall have the preference.

(3) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property or commensurate property, temporary grazing permits may be issued to nonmembers or members, preferring those that have used the range for any 3 years or any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945, preferring those that have used the range 5 years immediately preceding the organization of such districts.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part).

76-16-402. Conversion of temporary permittee lands to dependent commensurate property. (1) When such temporary permit is utilized by a permittee in connection with forage-producing lands owned or controlled by such permittee within or near the district for a period of any combination of 4 years out of 5, then the forage-producing lands owned or controlled by such permittee may be considered dependent commensurate property and, upon application, the district may accordingly grant such permittee membership and preference in the district providing an application had been made for temporary rights for each of the 5 years.

(2) However, such temporary permits shall at all times be merely privileges granted from year to year, and their possession shall in no event establish a preference right unless such preference right be expressly granted by the district and in the manner herein provided.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part).

76-16-403. Procedure if reduction in grazing privileges necessary. If reductions in grazing privileges become necessary, operators with temporary permits will be reduced first on a proportionate basis. When the extent of reduction of privileges exceeds that of temporary permits, then the rights of operators with both dependent commensurate property and commensurate property shall be reduced together on a proportionate basis.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part).

76-16-404. Application for grazing preferences. Any person entitled to grazing preferences within any state grazing district based on dependent commensurate property or commensurate property must make application within 1 year after said district shall have been organized to qualify for said preference; provided, however, all permittees shall be entitled to benefits accruing under 76-16-401 through 76-16-403.

History: En. Sec. 21, Ch. 208, L. 1939; amd. Sec. 6, Ch. 199, L. 1945; R.C.M. 1947, 46-2321(part).

76-16-405. Grazing preferences appurtenant to dependent commensurate property and commensurate property. Grazing preferences run with and are appurtenant to the dependent commensurate and commensurate property upon which they are based except as provided in this chapter. They are not subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other process or transaction, except as provided in this section, 76-16-406 through 76-16-409, 76-16-412, and 76-16-413 or in the bylaws of a state district.

History: Ap. p. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; Sec. 46-2322, R.C.M. 1947; Ap. p. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945, amd. Sec. 37, Ch. 253, L. 1974; Sec. 46-2302, R.C.M. 1947; R.C.M. 1947, 46-2302(part), 46-2322(part).

76-16-406. Transfer of preferences. (1) Upon application by a permittee, the state district with the approval of the department may allow a preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability; however, in any transfer of preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the preference appurtenant thereto for 5 consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer.

(2) In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners of the dependent commensurate or commensurate property from which the transfer is to be made and the owner or owners of any encumbrances on the property. A transfer is not effective until approved by the department.

(3) All expenses involved under the application shall be borne by the applicant.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part); amd. Sec. 24, Ch. 266, L. 1979.

76-16-407. Processing of application for transfer. (1) When an application for transfer is presented to the board of directors of a state district, the secretary upon the direction of that board shall give notice thereof, setting forth in general the application and the time and place of a hearing thereon as fixed by the board. A copy of the notice shall be given or mailed to the applicant and shall be published at least once a week for 2 successive weeks prior to the hearing in a newspaper published or generally circulated within the district, and the notice shall also be posted for at least 2 full weeks prior to the hearing in three public places within the district.

(2) The date of hearing must be at least 15 days from the first publication of the notice. At the hearing the directors shall fully hear and determine the application and any objections thereto.

History: **En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(2).**

76-16-408. Effect of transfer of preference. Upon the allowance of a transfer under 76-16-405 through 76-16-407, the property from which the transfer is made loses its grazing preference to the extent of the preference transferred.

History: **En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(3).**

76-16-409. Transfer of underlying property. (1) When the land to which a preference is attached changes its control or ownership, the preference changes with the land and the person to which the control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees.

(2) If the person fails to secure a nonuse permit or refuses to pay the grazing fees, the preferences may be revoked by the state district.

History: **En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).**

76-16-410. Compensation to district for range improvements. Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner upon lands leased by the state district. The value shall be the value at the expiration date of the lease. If the owner and the state district cannot agree as to the value, the state district may either remove or abandon the improvement. If the subsequent lessee and the state district cannot agree as to the value, it shall be fixed by the department.

History: **En. Sec. 23, Ch. 208, L. 1939; amd. Sec. 50, Ch. 253, L. 1974; R.C.M. 1947, 46-2323.**

76-16-411. Grazing permits to owners of land not controlled by district. (1) When any land is situated within the boundaries of a state district and is not leased or controlled by said district and not surrounded by a legal fence, any person owning or controlling such lands shall have the right to obtain a grazing permit from the state district, the size of which shall be determined by the carrying capacity of such land, full consideration being given for location of necessary stock water. The use of such permit shall be subject to all regulations by the state district.

(2) If the person owning or controlling such land declines to secure such permit or fails to lease such land to the state district at a fair lease rental and fails to fence such land at his own expense, he shall not be entitled to recover damages for trespass by stock grazing under permit, but the state district shall not issue a permit to use the carrying capacity of such land.

History: **En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part).**

76-16-412. Revocation of preferences upon failure to obtain permits, pay fees, or obey rules. (1) If a person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of the land by registered or certified mail that the preference attached to the land will be revoked unless the owner pays the usual grazing fees to the state district within 60 days from the time of receipt of the notice. The state district may revoke the preference if the owner or mortgagor does not pay the fees or secure a nonuse permit.

(2) If a permittee fails to pay grazing fees or assessments levied by the state district or fails to obtain a nonuse permit or violates any of the rules of the state district, the state district may notify the permittee and owner of the land by registered or certified mail that the preference attached to the land will be revoked unless the grazing fees or assessments are paid or the permittee ceases to violate the rules laid down by the district within 60 days from the time of receipt of the notice. The state district may revoke the preference if the permittee or owner fails to pay the charges or comply.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).

76-16-413. Effect of revocation. (1) When a preference is revoked, it is detached from the dependent commensurate or commensurate property to which it was formerly appurtenant and it immediately shifts to the state district.

(2) The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(7).

76-16-414. Equalization of district assets. (1) Whenever a state district shall possess reserves, the values of which are greater than its liabilities, and the state district shall determine that a part of such reserves is in excess of its reasonable needs to operate the district, such state district may refund to the permittee members their proportionate share of such reserves as determined at the last annual accounting.

(2) Whenever a state district shall possess reserves and physical assets, the values of which are greater than its liabilities, and a permittee member shall lose his grazing preference, he shall be entitled to receive his proportionate share of the value of such excess from the state district, as determined by the annual accounting of the state district. The state district may set off the amount of any claim it may have against such former member.

(3) Whenever a new member shall receive a grazing preference, he shall, as a condition of receiving such preference, pay to the state district the value of the equitable interest in the physical assets and reserve fund which accrues to him by virtue of such membership. Such value shall be determined at the time of receiving such preference and upon the basis of the determination of value of such physical assets and reserves made at the last annual accounting.

History: En. Sec. 24, Ch. 208, L. 1939; amd. Sec. 5, Ch. 163, L. 1953; R.C.M. 1947, 46-2324.

76-16-415. Application to trespass actions. Sections 76-16-405 through 76-16-409, 76-16-412, and 76-16-413 do not apply to trespass violations.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).

TITLE 77

STATE LANDS

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CHAPTER 1

ADMINISTRATION OF STATE LANDS

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Part 1

General Provisions

77-1-101. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(2) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(3) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(4) "State land" or "lands" means lands granted to the state by the United States for any purpose, either directly or through exchange for other lands; lands deeded or devised to the state from any person; and lands that are the property of the state through the operation of law. The term does not include lands the state conveys through the issuance of patent; lands used for building sites, campus grounds, or experimental purposes by any state institution that are the property of that institution; or lands acquired through foreclosure of any investments purchased under the provisions of 17-6-211.

History: En. Sec. 2, Ch. 60, L. 1927; re-en. Sec. 1805.2, R.C.M. 1935; amd. Sec. 7, Ch. 184, L. 1961; amd. Sec. 2, Ch. 428, L. 1973; amd. Sec. 2, Ch. 203, L. 1977; R.C.M. 1947, 81-102.

77-1-102. Ownership of certain islands and abandoned riverbeds. All lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake in this state and lying between the meandered lines of such stream or lake as the same are shown by the United States survey thereof and all islands existing in the navigable streams or lakes in this state which have not been surveyed by the government of the United States and all lands which at any time in the past comprised such an island or any part thereof, except such lands as are occupied by and belong to the adjacent landowners as accretions, belong to the state of Montana to be held in trust for the benefit of the public schools of the state.

History: En. Sec. 1, Ch. 36, L. 1937; R.C.M. 1947, 81-2301.

77-1-103. Administration of lands. The board shall lease or sell lands under 77-1-102 in the same manner as other school lands of the state are leased and sold. The board may sell or lease these lands without having them surveyed, unless the board considers it to be to the best interests of the state to have the lands surveyed as in 77-1-104. The proceeds from the leasing and sale of such lands shall be disposed of in the same manner as disposition is made of the proceeds from the leasing and sale of school lands of the state.

History: En. Sec. 2, Ch. 36, L. 1937; amd. Sec. 104, Ch. 428, L. 1973; R.C.M. 1947, 81-2302.

77-1-104. Survey of lands. If the board considers it necessary that any of the lands mentioned in 77-1-102 be surveyed, it shall have the lands surveyed by the county surveyor of the county in which the lands are located. If there is no county surveyor, if the county surveyor is unable to make the survey, or if the best interests of the state require, the board shall appoint a qualified surveyor to make the surveys. The county surveyor or other surveyor appointed shall make an actual survey thereof establishing four corners of every quarter section and connecting the same with a United States survey and within 30 days after such survey file with the county clerk and recorder of that county a copy under oath of his field notes and plat and a duly certified copy of his field notes and plat with the department. For the services required in connection with the survey, the county surveyor or other surveyor appointed is entitled to fees as prescribed in 7-4-2821. Such fees shall be paid in the same manner as other expenses of the department.

History: En. Sec. 3, Ch. 36, L. 1937; amd. Sec. 105, Ch. 428, L. 1973; R.C.M. 1947, 81-2303.

77-1-105. Determining title. The board may take all proper proceedings for the purpose of determining the title to the beds of lakes and other bodies of water and of streams within the state and to that end may bring or defend suits or other proceedings in court or before other proper tribunals.

History: En. Sec. 14, Ch. 148, L. 1937; Sec. 81-614, R.C.M. 1947; redes. 81-2305 and amd. by Sec. 46, Ch. 428, L. 1973; R.C.M. 1947, 81-2305.

77-1-106 through 77-1-110 reserved.

77-1-111. Court actions. (1) All actions for the recovery of money due under this title or for the cancellation of leases or for the cancellation of certificates of purchase or patents or for the recovery of state lands, actions of forcible entry and detainer, actions for ejectment, and all other actions affecting any state lands shall be controlled, as to venue, by the provisions of the rules of civil procedure relating to the place of trial of civil actions and shall be conducted by the attorney general.

(2) When so requested by the attorney general, the county attorney of each county in the state shall represent the state in all foreclosure proceedings, collections of delinquent rentals, actions for trespass on state lands, and in all other state land matters that may arise in his county. The county attorney shall not be entitled to charge the state any compensation for such services beyond his regular salary.

History: (1)En. Sec. 100, Ch. 147, L. 1909; re-en. Sec. 1921, R.C.M. 1921; re-en. Sec. 1921, R.C.M. 1935; Sec. 79-1503, R.C.M. 1947; (2)En. Sec. 112, Ch. 60, L. 1927; re-en. Sec. 1805.112, R.C.M. 1935; Sec. 81-1015, R.C.M. 1947; R.C.M. 1947, 79-1503, 81-1015.

77-1-112. Violations classified. (1) Any officer, employee, or representative of the state who directly or indirectly accepts any money or any other valuable thing, except his regular and lawful compensation, for performing or not performing an official act under the provisions of this title or for modifying the performance thereof is guilty of a felony and punishable as provided in 77-1-115.

(2) Any officer, employee, or representative of the state who knowingly and willfully makes any false classification or appraisal of any state land or of any land offered the state for sale or offered as security for a loan from the state or who falsely classifies or scales any timber on state lands or from state lands or any timber in which the state is interested or who knowingly and willfully makes any false report of any such classification or appraisal or scaling is guilty of a felony and punishable as provided in 77-1-115.

(3) (a) Any officer, employee, or representative of the state who otherwise violates any of the provisions of this title:

(i) is guilty of a felony if the violation results in a loss to the state of $1,000 or more; or

(ii) is guilty of a misdemeanor if the violation results in a loss to the state of less than $1,000 or in no pecuniary loss.

(b) The punishment shall be as provided in 77-1-115.

History: (1)En. Sec. 118, Ch. 60, L. 1927; re-en. Sec. 1805.118, R.C.M. 1935; Sec. 81-1111, R.C.M. 1947; (2)En. Sec. 106, Ch. 147, L. 1909; re-en. Sec. 1927, R.C.M. 1921; re-en. Sec. 1927, R.C.M. 1935; Sec. 79-1504, R.C.M. 1947; R.C.M. 1947, 79-1504, 81-1111; amd. Sec. 1, Ch. 15, L. 1979.

77-1-113. Restrictions on who may buy or lease state lands. It is unlawful for any member of the board, any person appraising lands or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber thereon, or any person connected with the department of state lands as an officer or employee to purchase or lease, directly or indirectly, any of the land of the state or any timber thereon.

History: En. Sec. 117, Ch. 60, L. 1927; re-en. Sec. 1805.117, R.C.M. 1935; amd. Sec. 75, Ch. 428, L. 1973; R.C.M. 1947, 81-1110; amd. Sec. 2, Ch. 15, L. 1979.

77-1-114. Prosecutions. (1) Whenever an arrest shall be made for any violation of the provisions of this title or whenever any information of such violations shall be lodged with him, the county attorney of the county in which this act was committed must prosecute the offender or offenders if in his judgment the facts warrant the same.

(2) If any county attorney shall fail to comply with the provisions of this section, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $100 or more than $1,000. Upon his conviction, the district court wherein he is convicted shall forthwith declare his office vacant and notify the proper appointing power thereof. Actions against the county attorney shall be brought by the attorney general in the name of the state.

(3) The penalties of this section shall also apply to any magistrate with proper authority who refuses or neglects to cause the arrest and prosecution of any person when a complaint under oath of a violation of any of the provisions of this title has been lodged with him.

History: En. Sec. 17, Ch. 147, L. 1909; re-en. Sec. 1839, R.C.M. 1921; re-en. Sec. 1839, R.C.M. 1935; R.C.M. 1947, 81-1416; amd. Sec. 3, Ch. 15, L. 1979.

77-1-115. Punishments. (1) Any officer, employee, or representative of the state who is found guilty of a felony as defined in 77-1-112 is punishable by imprisonment in the state penitentiary for not less than 1 or more than 10 years or by a fine which shall neither be less than $500 nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted or by both such imprisonment and fine.

(2) Any officer, employee, or representative of the state who is found guilty of a misdemeanor as defined in 77-1-112 is punishable by imprisonment in a county jail not to exceed 1 year or by a fine which shall neither be less than $100 nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted or by both such imprisonment and fine.

History: En. Sec. 119, Ch. 60, L. 1927; re-en. Sec. 1805.119, R.C.M. 1935; R.C.M. 1947, 81-1112; amd. Sec. 4, Ch. 15, L. 1979.

77-1-116. Additional penalty. In addition to the penalties provided for in this code against those committing trespass upon any of the lands owned or held in trust or otherwise by the state, the board is hereby authorized and empowered, without legal process, to seize and take or cause to be seized and taken any and all lumber, wood, grass, or other property unlawfully severed from the lands, whether the same has been removed from said lands or not, and may dispose of the same at either public or private sale in such manner as will be most conducive to the interests of the state, and all moneys arising therefrom, after deducting the reasonable and necessary expenses of such seizure and sale, shall be a part of the permanent fund to which such lands may belong.

History: En. Sec. 7, p. 49, L. 1893; re-en. Sec. 3566, Pol. C. 1895; re-en. Sec. 2219, Rev. C. 1907; amd. Sec. 59, Ch. 147, L. 1909; re-en. Sec. 1879, R.C.M. 1921; re-en. Sec. 1879, R.C.M. 1935; R.C.M. 1947, 81-1602.

77-1-117. Disposition of fines. Unless otherwise provided, all money received as fines, fees, and forfeitures under this title or as penalties for the violation of any of the land laws of this state shall be paid to the state treasurer and by him deposited to the credit of the general fund.

History: En. Sec. 104, Ch. 147, L. 1909; amd. Sec. 1, Ch. 99, L. 1917; amd. Sec. 1, Ch. 171, L. 1919; amd. Sec. 1, Ch. 103, L. 1921; re-en. Sec. 1919, R.C.M. 1921; re-en. Sec. 1919, R.C.M. 1935; R.C.M. 1947, 79-1502; amd. Sec. 5, Ch. 15, L. 1979.

Part 2

Board of Land Commissioners

77-1-201. Board — meetings and officers. (1) The board shall hold regular meetings at least once each month and may hold special meetings whenever considered necessary upon call of the president or a majority of the members.

(2) Three members of the board constitute a quorum for the transaction of business. The governor is the president of the board; in his absence the lieutenant governor shall preside and in his absence the superintendent of public instruction shall preside.

History: En. Sec. 4, Ch. 60, L. 1927; re-en. Sec. 1805.4, R.C.M. 1935; amd. Sec. 4, Ch. 428, L. 1973; R.C.M. 1947, 81-104.

77-1-202. Powers and duties of board. The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state. The board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state.

History: En. Sec. 3, Ch. 60, L. 1927; re-en. Sec. 1805.3, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1969; amd. Sec. 1, Ch. 67, L. 1973; amd. Sec. 3, Ch. 428, L. 1973; R.C.M. 1947, 81-103(part).

77-1-203. Multiple-use management. (1) The board shall manage state lands under the multiple-use management concept defined as the management of all the various resources of the state lands so that:

(a) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions and realizing that some land may be used for less than all of the resources; and

(b) harmonious and coordinated management of the various resources, each with the other, will result without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

(2) If a parcel of state land in one class has other multiple uses or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple-use values.

History: (1)En. Sec. 3, Ch. 60, L. 1927; re-en. Sec. 1805.3, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1969; amd. Sec. 1, Ch. 67, L. 1973; amd. Sec. 3, Ch. 428, L. 1973; Sec. 81-103, R.C.M. 1947; (2)En. Sec. 16, Ch. 60, L. 1927; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; Sec. 81-302, R.C.M. 1947; R.C.M. 1947, 81-103(part), 81-302(part); amd. Sec. 6, Ch. 15, L. 1979.

77-1-204. Power to sell, lease, or exchange certain state lands. (1) The board is authorized to lease state lands for uses other than agriculture, grazing, timber harvest, or mineral production under such terms and conditions which best meet the duties of the board as specified in 77-1-202 and 77-1-203(1). The lease period for such leases, except for power and school site leases, may not be for longer than 25 years.

(2) The board shall have full power and authority to sell, exchange or lease lands under its jurisdiction by virtue of 77-1-214 when, in its judgment, it is advantageous to the state to do so in the highest orderly development and management of state forests and state parks. Said sale, lease, or exchange shall not be contrary to the terms of any contract which it has entered into.

History: (1)En. 81-103.1 by Sec. 1, Ch. 135, L. 1974; Sec. 81-103.1, R.C.M. 1947; (2)En. Sec. 5, Ch. 159, L. 1937; Sec. 81-1107, R.C.M. 1947; R.C.M. 1947, 81-103.1, 81-1107.

77-1-205. Board to correct errors. The board shall correct errors, mistakes, and misdescriptions in deeds and conveyances of property to the state. Deeds or other conveyances shall be made and executed in the manner provided for the execution of patents by the state. The board may also correct errors in leases, certificates of purchase, patents, and other conveyances of property from the state upon satisfactory proof that an error or mistake has been made.

History: En. Sec. 115, Ch. 60, L. 1927; re-en. Sec. 1805.115, R.C.M. 1935; Sec. 81-1108, R.C.M. 1947; redes. 81-106 and amd. by Sec. 73, Ch. 428, L. 1973; R.C.M. 1947, 81-106.

77-1-206. Board to prescribe further rules for appraisal. The board shall prescribe such further rules for the appraisal of state lands as it may deem necessary, not inconsistent with the provisions of this title or the state constitution.

History: En. Sec. 18, Ch. 60, L. 1927; re-en. Sec. 1805.18, R.C.M. 1935; R.C.M. 1947, 81-303.

77-1-207. Board to defend suits. For the purpose of determining the title to any property seized and taken under the provisions of 77-1-116, the board is hereby authorized and empowered to defend, in the name of the state, any and all actions that may be brought for that purpose and to do and perform all things necessary to protect the interests of the state.

History: En. Sec. 8, p. 49, L. 1893; re-en. Sec. 3567, Pol. C. 1895; re-en. Sec. 2220, Rev. C. 1907; re-en. Sec. 60, Ch. 147, L. 1909; re-en. Sec. 1880, R.C.M. 1921; re-en. Sec. 1880, R.C.M. 1935; R.C.M. 1947, 81-1603.

77-1-208 through 77-1-210 reserved.

77-1-211. Acceptance of federal land grants. (1) The board may accept any grant of lands from the United States to the state made in carrying out the provisions of The Enabling Act and also any other grant for any special purpose that may be made by the United States to the state, except as provided in subsection (2).

(2) Legislative approval is required for any acceptance of land by the state of Montana from the United States if the land was acquired by the United States through condemnation procedures.

History: En. Sec. 113, Ch. 60, L. 1927; re-en. Sec. 1805.113, R.C.M. 1935; amd. Sec. 70, Ch. 428, L. 1973; R.C.M. 1947, 81-1101(part); amd. Sec. 1, Ch. 452, L. 1979.

77-1-212. Acceptance of federal facilities and installations — title in state. The board may, on behalf of the state, accept donations of federal installations, facilities, lands, or properties. All title to the installations or facilities shall be vested in the name of the state for its use. This section does not limit, reduce, or supersede Title 18, chapter 5, part 2.

History: **En. Sec. 1, Ch. 252, L. 1965; amd. Sec. 71, Ch. 428, L. 1973; R.C.M. 1947, 81-1101.1.**

77-1-213. Acceptance of gifts, donations, grants, legacies, and devises to the state. (1) The board is hereby authorized and empowered to accept on behalf of the state from any natural person gifts, donations, grants, legacies, and devises having a value of not less than $250 from each person. All lands passing to the state under these provisions or through the operation of law shall be managed as other state lands, and the rents and earnings shall be applied in accordance with the object and purpose specified by the grantor, subject to all constitutional limitations.

(2) All money realized from the sale of such lands and from other property and all gifts, donations, grants, legacies, and devises made in money or the equivalent of money shall be administered by the board for the benefit of the specific purposes designated by the person from whom they were received and as further regulated by this title. The provisions of this section shall apply to gifts, donations, grants, legacies, and devises already made to the state and now under the administration of the board if not contrary to any specific provisions made therein by the persons from whom they were received.

History: **En. Sec. 114, Ch. 60, L. 1927; re-en. Sec. 1805.114, R.C.M. 1935; amd. Sec. 43, Ch. 100, L. 1973; R.C.M. 1947, 81-1102.**

77-1-214. Donations of land for forestry purposes. The board may accept gifts, donations, or contributions of land suitable for forestry or park purposes and enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise such lands as in the judgment of the board are desirable for state forests.

History: **En. Sec. 1, Ch. 159, L. 1937; amd. Sec. 72, Ch. 428, L. 1973; R.C.M. 1947, 81-1103.**

77-1-215. Expenditures authorized. When lands are acquired or leased under 77-1-214, the board is hereby authorized to:

(1) make expenditures from any funds not otherwise obligated for the management, development, and utilization of such areas;

(2) sell or otherwise dispose of products from such lands; and

(3) make such rules as may be necessary to carry out the purposes of 77-1-214 through 77-1-217 and 77-1-204(2).

History: **En. Sec. 2, Ch. 159, L. 1937; R.C.M. 1947, 81-1104.**

77-1-216. Disposition of revenues and profits. All revenues derived from lands acquired under the provisions of 77-1-214 shall be segregated by the state treasurer for the use of the board in the acquisition, management, development, and use of such lands until all obligations incurred have been paid in full. Thereafter, 50% of all net profits accruing from the administration of such lands shall be applicable for such purposes as the legislature may prescribe and 50% shall be paid into the school fund of the county in which lands are located.

History: **En. Sec. 3, Ch. 159, L. 1937; R.C.M. 1947, 81-1105.**

77-1-217. Payment of certain obligations. Obligations for the acquisition of land incurred by the board under the authority of 77-1-214 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the state.

History: En. Sec. 4, Ch. 159, L. 1937; R.C.M. 1947, 81-1106.

Part 3

Department of State Lands

77-1-301. Powers and duties of the department. (1) Under the direction of the board, the department has charge of the selecting, exchange, classification, appraisal, leasing, management, sale, or other disposition of the state lands. It shall perform such other duties the board directs, the purpose of the department demands, or the statutes require.

(2) It shall collect and receive all moneys payable to the state through its office as fees, rentals, royalties, interest, penalties, or payments on mortgages or lands purchased from the state or derived from any other source. It shall issue a receipt for each cash payment or whenever requested by the payer.

History: En. Sec. 8, Ch. 60, L. 1927; re-en. Sec. 1805.8, R.C.M. 1935; amd. Sec. 2, Ch. 26, L. 1971; Sec. 81-204, R.C.M. 1947; redes. 81-105 and amd. by Sec. 5, Ch. 428, L. 1973; R.C.M. 1947, 81-105.

77-1-302. Setting fees. The department may prescribe fees, with the approval of the board, for the issuance, filing, or making of a copy of any instrument or for any other service.

History: En. Sec. 120, Ch. 60, L. 1927; re-en. Sec. 1805.120, R.C.M. 1935; amd. Sec. 19, Ch. 121, L. 1965; amd. Sec. 11, Ch. 22, L. 1971; Sec. 81-1113, R.C.M. 1947; redes. 81-108 and amd. by Sec. 76, Ch. 428, L. 1973; R.C.M. 1947, 81-108.

77-1-303. Refunding of money paid by mistake. If any money is erroneously paid to the state on any permit, lease, certificate of purchase, patent, loan, or in any other transaction, the department shall refund that money to the person entitled to it from the proper fund.

History: En. Sec. 116, Ch. 60, L. 1927; re-en. Sec. 1805.116, R.C.M. 1935; Sec. 81-1109, R.C.M. 1947; redes. 81-107 and amd. by Sec. 74, Ch. 428, L. 1973; R.C.M. 1947, 81-107.

77-1-304. Selection and location of lands granted by United States. Under the general direction of the board and as rapidly as the appropriations for the work will permit, the department shall select and locate all lands, except timberlands, granted to this state by the United States for any purpose and not located by the grant itself. It shall also select and locate lands in lieu of all those lands in sections 16 and 36 and in the other federal land grants which for any reason have been lost to the state. All selections shall as far as possible be in legal subdivisions. In the selection and location of these lands, careful attention shall be given to the water available and which may be appropriated for these lands for domestic use, livestock, and irrigation.

History: En. Sec. 15, Ch. 60, L. 1927; re-en. Sec. 1805.15, R.C.M. 1935; amd. Sec. 7, Ch. 428, L. 1973; R.C.M. 1947, 81-301.

Part 4

Classification of State Lands

77-1-401. Classes of land. The state lands are classified as follows:

(1) Class 1—lands which are principally valuable for grazing purposes;

(2) Class 2—lands which are principally valuable for the timber that is on them or for the growing of timber or for watershed protection;

(3) Class 3—lands which are principally valuable for the production of crops;

(4) Class 4—lands which are principally valuable for uses other than grazing, crop production, timber production, or watershed protection.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(1).

77-1-402. Basis for classification or reclassification. (1) The classification or reclassification shall be so made as to place state land in the class which best accomplishes the powers and duties of the board as specified in 77-1-202 and 77-1-203(1). When state lands are classified or reclassified in accordance with these duties and responsibilities, special attention shall be paid to the capability of the land to support an actual or proposed land use authorized by each classification.

(2) It is the duty of the department to classify or reclassify state lands so that no state land will be sold, leased, or used under a different classification from that to which it actually belongs.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(part).

77-1-403. Capability inventory. A capability inventory shall be made prior to changing the classification of state lands. Such inventory shall include, when appropriate to the classification, information on soils capability, vegetation, wildlife use, mineral characteristics, public use, aesthetic values, cultural values, surrounding land use, and any other resource, zoning, or planning information which is related to the classification.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(part).

77-1-404. Records of state lands. All field books, plats, maps, and records of the department shall show the class to which each tract therein belongs and whether it belongs to the public schools of the state or to a state institution or other entity according to the grant or instrument by which title to the land has passed to the state. They shall also show whether or not the coal or other minerals in the land are reserved by the United States and shall contain any other information the department considers necessary.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(4).

Part 5

State Land Equalization Payments

77-1-501. List of state lands by county. The department shall, before the first Monday of April of every year, prepare and transmit a statement to the department of revenue or its agent in each county in which the state has real property in excess of 6% of the total land area of the county and from which the state derives grazing, agricultural, or forest income. The statement shall contain the total number of acres owned by the state in that county and list the acres separately as grazing, agricultural, or forest land.

History: **En. Sec. 1, Ch. 235, L. 1967; amd. Sec. 54, Ch. 391, L. 1973; amd. Sec. 77, Ch. 428, L. 1973; R.C.M. 1947, 81-1115.**

77-1-502. Computation of state land equalization payment. (1) The department of revenue shall compute the amount of taxes which would be payable on the county assessments of said property as if it were owned by and taxable to a taxpayer of such county.

(2) If the land is not classified, the sum to be listed shall be determined by the average tax payment made on like property within the county where said land is situated, not to exceed 12 cents per grazing acre, 35 cents per agricultural acre, and 12 cents per forest acre. The average tax may be derived from the most recent biennial report of the department of revenue. The total figure arrived at by this method shall be called the gross assessment figure.

(3) The county exemption factor shall be determined by dividing the percentage the state-owned land bears to the total land area of the county into 6%. This quotient shall be multiplied by the gross assessment figure, and the product is called the state exemption figure.

(4) The state exemption figure shall be subtracted from the gross assessment to give the state land equalization payment.

History: **En. Sec. 2, Ch. 235, L. 1967; amd. Sec. 55, Ch. 391, L. 1973; R.C.M. 1947, 81-1116.**

77-1-503. Form to be completed by county agent of the department of revenue. The department shall provide a form to be followed and completed by the agent of the department of revenue in each county. The agent shall, before October 1, make the computations required and submit to the department the completed form which shall show the computations and method used in arriving at the state land equalization payment.

History: **En. Sec. 3, Ch. 235, L. 1967; amd. Sec. 56, Ch. 391, L. 1973; amd. Sec. 78, Ch. 428, L. 1973; R.C.M. 1947, 81-1117.**

77-1-504. Processing of county statements. The department shall examine the statement returned by the agent of the department of revenue for accuracy, and in no case shall the state land equalization payment be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The department shall, before November 1 of each year, prepare and file a claim with the department of administration for all counties who are eligible for state land equalization payments, and this claim shall show the amount of money each eligible county will receive.

History: **En. Sec. 4, Ch. 235, L. 1967; amd. Sec. 57, Ch. 391, L. 1973; amd. Sec. 79, Ch. 428, L. 1973; R.C.M. 1947, 81-1118.**

77-1-505. Warrant for payments to counties. The department of administration shall, before December 1, approve and authorize the issuance of a warrant on the general fund of the state made payable to the county treasurer of the counties shown on the claim for the payment of the state land equalization payment.

History: **En. Sec. 5, Ch. 235, L. 1967; amd. Sec. 80, Ch. 428, L. 1973; R.C.M. 1947, 81-1119.**

77-1-506. County distribution. The county treasurer shall distribute the money received under this part within his county as hereinafter provided:

(1) Sixty percent of total payment shall be broken down into cents per acre of total state-owned land within the county and apportioned between the elementary school districts in accordance with the amount of state-owned land in each elementary district.

(2) Forty percent shall be allotted to the county road fund.

History: En. Sec. 6, Ch. 235, L. 1967; R.C.M. 1947, 81-1120.

77-1-507. School district use of proceeds. The money received by any school district under this part shall be designated as district money for the general maintenance and operation of the elementary schools of the district. Such money may be used by the district as all other cash balances are used in accordance with the provisions of 20-9-335.

History: En. Sec. 7, Ch. 235, L. 1967; amd. Sec. 81, Ch. 428, L. 1973; R.C.M. 1947, 81-1121.

77-1-508. Repealed. Sec. 1, Ch. 214, L. 1979.

Part 6

Development of State Lands

77-1-601. Statement of policy. It is in the best interest and to the great advantage of the state of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system, and other institutions benefiting therefrom, and that in so doing the economy of the local community as well as the state is benefited as a result of the impact of such development.

History: En. Sec. 1, Ch. 295, L. 1967; R.C.M. 1947, 81-2401.

77-1-602. Definition of terms. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Account" means the resource development account in the earmarked revenue fund.

(2) "Income" means all proceeds received for the use of state land except revenues required by law to be placed in the Montana trust and legacy fund.

History: En. Sec. 2, Ch. 295, L. 1967; amd. Sec. 106, Ch. 428, L. 1973; R.C.M. 1947, 81-2402.

77-1-603. Rules. The board shall adopt such rules as it considers necessary and proper for the purpose of carrying out the provisions of this part.

History: En. Sec. 8, Ch. 295, L. 1967; amd. Sec. 112, Ch. 428, L. 1973; R.C.M. 1947, 81-2408.

77-1-604. Resource development account. A resource development account in the earmarked revenue fund in the state treasury is created to be used solely for the purpose of investing in the improvement and development of state lands acquired by grant or foreclosure in order to increase the revenue to be derived therefrom for common school support and support of the other entities, institutions, and objects for which the lands are held in trust. Appropriations from the account shall be expended for no other purposes.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part).

77-1-605. Types of developments. The developments contemplated may include those projects that will develop or conserve the various state land resources, including water, both surface and underground, grazing land, agricultural land, and timber land to the benefit of the state. They may also include expenses necessary to perfect title to lands claimed by the state which are suitable for development and other expenses or costs which in the judgment of the board are desirable or necessary in order to develop or increase the value of the land or the revenue therefrom.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part).

77-1-606. Restriction on use of income from school and institutional lands. Moneys in the account derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands shall be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust. If the board determines that public lands in a trust may be developed and moneys in the account from that trust are insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient moneys from other trusts in the account. Trust accounts from which money is transferred shall be reimbursed by a method approved by the board.

History: En. Sec. 4, Ch. 295, L. 1967; amd. Sec. 1, Ch. 180, L. 1973; amd. Sec. 108, Ch. 428, L. 1973; R.C.M. 1947, 81-2404.

77-1-607. Deductions from income for development account — maximum percentage. The board shall determine the amount or percentage of income, not to exceed 2 ½%, which is necessary to achieve the purposes of this part and shall provide by rule for deductions of that amount or percentage from the income which is secured from the lands by the department for the trusts benefited by this part.

History: En. Sec. 5, Ch. 295, L. 1967; amd. Sec. 109, Ch. 428, L. 1973; R.C.M. 1947, 81-2405.

77-1-608. Crediting of deductions. All deductions from gross proceeds made in accordance with 77-1-607 shall be paid into the account, and the balance of the proceeds shall be paid into the state treasury to the credit of the proper account.

History: En. Sec. 6, Ch. 295, L. 1967; amd. Sec. 110, Ch. 428, L. 1973; R.C.M. 1947, 81-2406.

77-1-609. Investment of moneys in development account. The board of investments shall invest the moneys in the resource development account in safe interest-bearing securities for the benefit of the account.

History: En. Sec. 7, Ch. 295, L. 1967; amd. Sec. 111, Ch. 428, L. 1973; R.C.M. 1947, 81-2407.

CHAPTER 2

TRANSFERS AND RESERVATIONS OF PROPERTY INTERESTS

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Part 1

Easements

77-2-101. Easements for public uses. (1) The board may grant easements in state lands for schoolhouse sites and grounds, public parks, community buildings, cemeteries, and other public uses upon proper applications accompanied by accurate and duly verified plats from the lawfully constituted authorities having charge of those properties.

(2) The board may grant an easement for right-of-way across or upon any portion of state lands for any public highway or street, any ditch, reservoir, railroad, private road, telegraph or telephone line, or any other public use as defined in 70-30-102. This subsection shall not be construed to grant authority to convey any such land, except for the purposes above set forth.

History: (1)En. Sec. 57, Ch. 60, L. 1927; re-en. Sec. 1805.57, R.C.M. 1935; amd. Sec. 6, Ch. 257, L. 1965; amd. Sec. 53, Ch. 428, L. 1973; Sec. 81-802, R.C.M. 1947; (2)En. Sec. 62, Ch. 60, L. 1927; re-en. Sec. 1805.62, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1939; Sec. 81-804, R.C.M. 1947; R.C.M. 1947, 81-802, 81-804(part).

77-2-102. Application for easement. (1) Application for an easement on state land must be made to the department. It shall describe the proposed right-of-way according to survey, show the necessity for the proposed highway or street or other easement, and give any additional information the department requires.

(2) This application shall be accompanied by two exact copies of the official plat of the proposed highway, street, or other easement, duly verified by the affidavit of the county surveyor or county or city engineer or other engineer having prepared the same endorsed thereon. These plats shall show the quantity of land taken by the proposed highway or street or other easement for each 40-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that 40-acre tract or government lot. When deemed necessary by the department, these plats shall show all these facts for such smaller subdivisions as the circumstances may render desirable for the state. However, when the purpose of the right-of-way applied for is the transmission or distribution of electric energy or the construction and operation of pipelines or telephone, telegraph, or radio systems, the plats and measurements need not be given, except the description of the location of the center line of the right-of-way, and the entire right-of-way may be applied for in one application with only one plat of the entire right-of-way required.

History: En. Sec. 61, Ch. 60, L. 1927; re-en. Sec. 1805.61, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973; R.C.M. 1947, 81-803(part).

77-2-103. Processing of application. (1) Upon the filing of an application and plats, the department shall, whenever it considers it necessary, examine the proposed right-of-way and report its findings to the board. The board shall consider the application and report and take any action it considers proper, including the fixing of compensation and damages to be paid to the state. The compensation shall be the full market value of the estate or interest disposed of through the granting of the right-of-way easement, and the damages shall be the actual damages resulting to the remaining land as nearly as they can be ascertained. If the right-of-way is granted according to the plat, the plat shall become the official plat thereof and shall be retained in the office of the department. The board shall issue right-of-way deeds for all such easements that it grants upon full payment being made.

(2) If the state land over or through which a right-of-way is applied for is under certificate of purchase or sales contract, the purchaser or his assignee must be made a party to the proceedings and his consent in writing to the laying out and establishment of the proposed highway, street, or other easement and to the amount of compensation and damages to be paid must be filed with the board before the right-of-way is granted. The board is the judge of how much compensation and damages shall be paid to the state and applied on the certificate of purchase or sales contract and of how much, if any, shall be paid to the purchaser, as the circumstances in each individual case warrant. This subsection applies to all grants of rights-of-way on state lands.

History: En. Sec. 61, Ch. 60, L. 1927; re-en. Sec. 1805.61, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973; R.C.M. 1947, 81-803(2), (3).

77-2-104. Nature of easements. Easements granted under 77-2-102 and 77-2-103 include permission to install and maintain poles, anchors, and other appurtenances necessary for the mechanical support of the transmission or distribution lines.

History: En. Sec. 61, Ch. 60, L. 1927; re-en. Sec. 1805.61, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973; R.C.M. 1947, 81-803(part).

77-2-105. Termination of easements. Whenever lands granted for any of the purposes mentioned in 77-2-101(2) shall cease to be used for such purposes, said easement shall forthwith terminate upon notice to that effect to the person to whom such grant was made, served at his last known post-office address.

History: En. Sec. 62, Ch. 60, L. 1927; re-en. Sec. 1805.62, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1939; R.C.M. 1947, 81-804(part).

77-2-106. Charge for granting of easement. The board shall charge and cause to be collected the full market value of the estate or interest disposed of through the granting of any such easement and also fix, charge, and cause to be collected the amount of the actual damages resulting to the remaining land or lands from the granting of such easement as nearly as the same can be ascertained. Where a road follows the section lines of state lands, the increased value accruing to said lands on account of construction of a road on said right-of-way easement shall be taken into consideration by the board in determining compensation, if any, for the easement.

History: En. Sec. 62, Ch. 60, L. 1927; re-en. Sec. 1805.62, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1939; R.C.M. 1947, 81-804(part).

77-2-107. Involvement of lessee when land subject to prior lease. (1) Whenever any kind of right-of-way easement has been granted under this part and the state land in which it is granted is under lease, the party receiving such grant shall give due and timely notice to the lessee and shall make just settlement with him for any damages resulting to his improvements or crops or leasehold interests.

(2) Upon such settlement being made, the lessee shall open or move any fences that may obstruct the right-of-way over the lands under his lease and otherwise cooperate in the opening of the right-of-way. Proof shall be filed with the board that such settlement has been made before the deed to the easement is issued.

History: En. Sec. 63, Ch. 60, L. 1927; re-en. Sec. 1805.63, R.C.M. 1935; amd. Sec. 3, Ch. 108, L. 1939; R.C.M. 1947, 81-805.

77-2-108. Grant of easements to United States. (1) There is granted to the United States over all state lands an easement of sufficient width for the purpose desired for right-of-way for ditches, canals, tunnels, telephone, telegraph, and electric power lines now constructed or to be constructed by the United States in furtherance of the reclamation of arid lands, flood control, river regulation, conservation of water, and transmission and distribution of electric energy.

(2) All conveyances of state lands shall contain a reservation of such rights-of-way easements. If the lands herein granted as rights-of-way cease to be used for that purpose, they shall revert to the state upon notice to that effect being given to the proper authorities.

History: En. Sec. 56, Ch. 60, L. 1927; amd. Secs. 1, 2, 3 and 4, Ch. 37, Ex. L. 1933; re-en. Sec. 1805.56, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1945; amd. Sec. 52, Ch. 428, L. 1973; R.C.M. 1947, 81-801(2), (3).

Part 2

Exchanges of Land

77-2-201. Exchange of land with United States. (1) The board may enter into contracts or agreements with the United States or any department thereof having jurisdiction for the waiving and relinquishment to the United States of any rights of the state in and to sections 16 and 36 of any township and to any other parcel of state lands, provided that the state shall, in lieu of the rights so waived and relinquished, receive from the United States other lands of equal or greater value.

(2) The current user of the land transferred to the United States may continue to enjoy the use of the land under terms and conditions required by the federal government and in accordance with P.L. 88-607, as amended, (43 U.S.C. 1411 through 1418), and the current user of the land received from the United States may continue to utilize the land on the terms and conditions imposed by law or by the board.

History: En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; re-en. Sec. 1805.19, R.C.M. 1935; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965; amd. Sec. 1, Ch. 39, L. 1967; amd. Sec. 9, Ch. 428, L. 1973; R.C.M. 1947, 81-304(1), (3); amd. Sec. 7, Ch. 15, L. 1979.

77-2-202. Exchange of land with counties. The board may accept on behalf of the state title in fee simple to any land owned by a county in the state and may convey in exchange therefor state land of approximately the same area and of a value not higher than the land received from the county if the exchange will result in consolidating the state lands into more compact bodies.

History: En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; re-en. Sec. 1805.19, R.C.M. 1935; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965; amd. Sec. 1, Ch. 39, L. 1967; amd. Sec. 9, Ch. 428, L. 1973; R.C.M. 1947, 81-304(2).

77-2-203. Exchange for private land. (1) The board is authorized to exchange state land for private land provided that the private land is of equal or greater value than the state land and as closely as possible equal in area. The board shall place priority on exchanges which result in consolidation of state lands into more compact bodies. This section does not apply to exchanges undertaken under 76-12-107.

(2) If the requirements of subsection (1) and 77-2-204 are met, state lands bordering on navigable lakes and streams or other bodies of water with significant public use value may be exchanged for private land if the private land borders on similar navigable lakes, streams, or other bodies of water.

History: En. Sec. 1, Ch. 472, L. 1975; R.C.M. 1947, 81-307(1), (3).

77-2-204. Hearing on exchange of private land. Prior to completing any such exchange under 77-2-203, a public hearing shall be held in the county containing the state land to be exchanged. When specific objections to the proposed exchange are raised during any such hearing, the board shall make findings of fact responding to such objections and explaining their action.

History: En. Sec. 1, Ch. 472, L. 1975; R.C.M. 1947, 81-307(2).

77-2-205. Restriction on exchange for private land. No exchange under 77-2-203 shall be made which will induce or encourage large-scale commercial, industrial, or residential development unless the value of such development is considered in determining the fair market value and unless the proposed development will not adversely affect the resources of the existing state tracts or those tracts which the state would receive under the proposed exchange.

History: En. Sec. 1, Ch. 472, L. 1975; R.C.M. 1947, 81-307(4).

77-2-206 through 77-2-210 reserved.

77-2-211. Exchange of timbered, cut-over, or burned-over lands. The board may accept on behalf of the state title in fee simple to any timbered lands or lands from which the timber has been cut or burned and in exchange therefor may convey not to exceed an equal value of similar state land. However, no such exchange may be made except that which in the opinion of the board will benefit the public interest. For the purpose of such an exchange, all state lands, including those referred to in 77-2-303(3), 77-2-311, and 77-5-101, are subject to be offered for such exchange, and any restrictions against their sale or disposal are, for the purpose of such an exchange, released.

History: En. Sec. 1, Ch. 180, L. 1931; re-en. Sec. 1995.1, R.C.M. 1935; amd. Sec. 99, Ch. 428, L. 1973; R.C.M. 1947, 81-2201.

77-2-212. Rules. The board shall adopt and promulgate such rules and methods of procedure affecting or touching the exchanges of lands under 77-2-211 through 77-2-217 as in its judgment seems advisable to the end that the public interests may be conserved.

History: En. Sec. 5, Ch. 180, L. 1931; re-en. Sec. 1995.5, R.C.M. 1935; amd. Sec. 103, Ch. 428, L. 1973; R.C.M. 1947, 81-2205.

77-2-213. Department of natural resources and conservation to investigate. When a proposal for an exchange pursuant to 77-2-211 is made and the owners of the respective tracts involved seem agreeable to negotiate such exchanges, the proposal shall be referred to the department of natural resources and conservation and that department shall thoroughly investigate all the lands involved in the proposal and estimate the value of all of the lands and consider every factor in connection with the proposal as may affect the public interest.

History: En. Sec. 2, Ch. 180, L. 1931; re-en. Sec. 1995.2, R.C.M. 1935; amd. Sec. 100, Ch. 428, L. 1973; R.C.M. 1947, 81-2202.

77-2-214. Investigation and findings concerning exchange of land. (1) The department of natural resources and conservation shall, as soon as it concludes its investigation thereof, report to the board the facts disclosed by its investigation and include in its report a recommendation concerning the proposal, including its reasons therefor in writing.

(2) After considering the report and recommendation and making such further investigation as it considers advisable, the board shall consider the entire matter, make findings and conclusions concerning the proposal, and make an order:

(a) rejecting and dismissing the proposal if in the judgment of the board the exchange is not in the public interest; or

(b) accepting the proposal and ordering the exchange to be made if in the judgment of the board the exchange is in the public interest and should be made.

(3) An order accepting the proposal shall contain an accurate description of all lands to be exchanged.

History: En. Sec. 3, Ch. 180, L. 1931; re-en. Sec. 1995.3, R.C.M. 1935; amd. Sec. 101, Ch. 428, L. 1973; R.C.M. 1947, 81-2203; amd. Sec. 8, Ch. 15, L. 1979.

77-2-215. Notice and hearing concerning exchange of timbered lands. If the board approves a proposal for exchange pursuant to 77-2-211, the department of state lands shall publish at least once in some newspaper of general circulation in each county in which any of the lands involved are located a notice stating in general terms the proposal and describing the lands involved and ownership thereof. The notice shall fix a day not less than 20 and not more than 60 days from the date of the first publication at which the board will hear objections to the proposed exchange and at which any person, firm, or corporation may appear in person or by representative and be heard.

History: En. Sec. 4, Ch. 180, L. 1931; re-en. Sec. 1995.4, R.C.M. 1935; amd. Sec. 102, Ch. 428, L. 1973; R.C.M. 1947, 81-2204(1).

77-2-216. Final order of board. Within 10 days after the conclusion of the hearing, the board shall make a final order describing the terms of the proposal for the exchange of the land involved and shall either dismiss the proposal as not being in the public interest or direct the proper officers to proceed to complete the exchange, as authorized by 77-2-211.

History: En. Sec. 4, Ch. 180, L. 1931; re-en. Sec. 1995.4, R.C.M. 1935; amd. Sec. 102, Ch. 428, L. 1973; R.C.M. 1947, 81-2204(2).

77-2-217. Status of exchanged lands. All lands taken in exchange under 77-2-211 through 77-2-216 for lands granted by the United States to the state of Montana prior to July 1, 1931, shall be subject to the same restrictions, limitations, and provisions as the lands granted by the United States are now subject to. All lands granted by the state in carrying out such exchanges shall thereafter be free from the restrictions and limitations provided by The Enabling Act of the state of Montana or the other grant from the United States.

History: En. Sec. 6, Ch. 180, L. 1931; re-en. Sec. 1995.6, R.C.M. 1935; R.C.M. 1947, 81-2206(part).

Part 3

Sales

77-2-301. Sales of state land under board control. The board is hereby vested with the power and authority to decide when sales of state lands are to be held and what state lands are to be offered for sale, subject to the limitations of this title, as the best interests of the state may appear to require. As a general rule, no sale of state lands shall be held unless applications have been made for the purchase of lands within one county by prospective purchasers representing at least 12 families.

History: En. Sec. 70, Ch. 60, L. 1927; re-en. Sec. 1805.70, R.C.M. 1935; R.C.M. 1947, 81-907.

77-2-302. Disposition of former institutions. Notwithstanding any other section in this chapter, any lands, including buildings, formerly used as or by a state institution which are no longer used for institutional purposes may be disposed of in whole or in part on such terms and in such manner as the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. Disposal of such property shall not be finally concluded until 60 days' public notice of the terms of the proposed disposal shall have been given.

History: En. 81-907.1 by Sec. 1, Ch. 410, L. 1977; R.C.M. 1947, 81-907.1.

77-2-303. Restrictions on land available for sale. (1) Lands classified as timberlands are not subject to sale, but timber thereon may be sold and disposed of in the manner provided by law.

(2) Lands which in the judgment of the board are likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits are not subject to sale, either the surface land or any of such deposits therein. However, this does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.

(3) (a) There is also reserved from sale from all state lands bordering on navigable lakes or bordering on nonnavigable meandered lakes and from all

state lands bordering on navigable streams, as the board may deem in the best interests of the state, a strip of land which shall include all the land lying between low-water mark and high-water mark and which in addition shall extend in width landward from the line of high-water mark of such lake or stream the full width of the 40-acre tract or government lot abutting the line of high-water mark. If the width of such abutting government lot at its narrowest point is less than 100 feet, then the strip hereby reserved shall extend to and include the next adjoining 40-acre tract or government lot. The land reserved from sale by this subsection shall be subject to the granting of easements the same as other state lands.

(b) Such strips of land bordering on meandering lakes or on navigable streams, except the strip lying between low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may, however, be leased as provided in this title for the leasing of other state lands.

History: (1), (2)En. Sec. 64, Ch. 60, L. 1927; re-en. Sec. 1805.64, R.C.M. 1935; amd. Sec. 55, Ch. 428, L. 1973; Sec. 81-901, R.C.M. 1947; (3)En. Sec. 66, Ch. 60, L. 1927; re-en. Sec. 1805.66, R.C.M. 1935; amd. Sec. 7, Ch. 257, L. 1965; Sec. 81-903, R.C.M. 1947; R.C.M. 1947, 81-901, 81-903(part).

77-2-304. Mineral reservations in state lands. (1) All coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits in state lands, except sand, gravel, building stone, and brick clay, which were not reserved by the United States before July 1, 1927, are reserved to the state. All those deposits are reserved from sale except upon a rental and royalty basis as provided by law. A purchaser of state lands acquires no right, title, or interest in or to any of those deposits. The state also reserves for itself and its lessees the right to enter upon these lands to prospect for, develop, mine, and remove those deposits and to occupy and use so much of the surface of the lands as may be required for all purposes reasonably extending to the exploring for, mining, and removal of the deposits therefrom, but the lessee shall make just payment to the purchaser for all damage done by reason of such entry upon the land and the use and occupancy of the surface thereof.

(2) The mineral reservations now applying to sale of lands received through grants from the United States apply to all lands sold to the United States under 77-2-316, but all prospecting and exploration for minerals therein, the mining and removal thereof, and all operations carried on in connection therewith must be carried on in such manner and under such regulations that they will not interfere with the use of the lands for the purposes for which they have been purchased by the United States.

History: (1)En. Sec. 65, Ch. 60, L. 1927; amd. Sec. 1, Ch. 28, L. 1929; amd. Sec. 1, Ch. 183, L. 1935; re-en. Sec. 1805.65, R.C.M. 1935; amd. Sec. 1, Ch. 184, L. 1961; amd. Sec. 56, Ch. 428, L. 1973; Sec. 81-902, R.C.M. 1947; (2)En. Sec. 56, Ch. 60, L. 1927; amd. Secs. 1, 2, 3 and 4, Ch. 37, Ex. L. 1933; re-en. Sec. 1805.56, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1945; amd. Sec. 52, Ch. 428, L. 1973; Sec. 81-801, R.C.M. 1947; R.C.M. 1947, 81-801(4), 81-902.

77-2-305. Lands within federal irrigation projects. Whenever state lands are located within the boundaries of federal irrigation projects, the land shall be sold in conformity with the classification of farm units as made by the United States, and all certificates of purchase issued for such lands shall show that the lands are located within a federal irrigation project and are or will be liable for their proper share of the reclamation charges.

History: En. Sec. 69, Ch. 60, L. 1927; re-en. Sec. 1805.69, R.C.M. 1935; R.C.M. 1947, 81-906.

77-2-306. Who may purchase. (1) State lands shall be sold only to citizens of the United States or to persons who have declared their intentions to become citizens or to corporations organized under the laws of this state. No person shall be qualified to purchase state land who has not reached the age of 18 years. As far as possible to determine, the lands shall be sold only to actual settlers or to persons who will improve the same and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value.

(2) State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in 77-2-307 for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

History: En. Sec. 71, Ch. 60, L. 1927; re-en. Sec. 1805.71, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961; amd. Sec. 19, Ch. 240, L. 1971; amd. Sec. 31, Ch. 94, L. 1973; R.C.M. 1947, 81-908(part).

77-2-307. Limitation on acreage. No person or corporation shall be entitled to purchase more than one section of state land, and this area shall not include more than 160 acres of land susceptible of irrigation. These limitations as to area and irrigability shall not apply to lands within a federal irrigation project wherein the Congress of the United States of America authorizes water to be furnished to an area exceeding 160 irrigable acres.

History: En. Sec. 71, Ch. 60, L. 1927; re-en. Sec. 1805.71, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961; amd. Sec. 19, Ch. 240, L. 1971; amd. Sec. 31, Ch. 94, L. 1973; R.C.M. 1947, 81-908(part).

77-2-308. Approval or disapproval of sales. All sales of state lands shall be subject to the approval and confirmation by the board, and no sale shall be deemed completed until after such approval and confirmation. The board shall have the power and it shall be its duty to disapprove any sale which in its opinion would be disadvantageous to the state.

History: En. Sec. 82, Ch. 60, L. 1927; re-en. Sec. 1805.82, R.C.M. 1935; R.C.M. 1947, 81-918(part).

77-2-309. Discretion of board with respect to surveying and platting. Except as provided in 77-2-312, it shall be entirely optional with the board whether or not state lands or any part thereof shall be surveyed, platted, and laid off into blocks and lots as herein provided, as may appear to be for the best interests of the state.

History: En. Sec. 68, Ch. 60, L. 1927; re-en. Sec. 1805.68, R.C.M. 1935; amd. Sec. 41, Ch. 100, L. 1973; R.C.M. 1947, 81-905(part).

77-2-310. Certain lands to be platted before sale. (1) Any part of state lands adjacent to cities or towns and other state lands which in the opinion of the board may be wanted for residence or business lots shall before sale, at such time as the board may deem to be for the best interests of the state, be surveyed and laid off in blocks, lots, streets, alleys, avenues, highways, public squares, market places, and parks in conformity with the laws of the state for the survey and platting of townsites and additions thereto, conforming as nearly as may be with the ordinances of such city or town regarding the platting of additions thereto. The board must cause correct maps and plats of such lands to be made and recorded when so surveyed and not otherwise. No fee shall be charged by the county recorder or by any city officer for filing or recording such maps or plats when recorded on behalf of the state.

(2) Before the lands so surveyed and laid off are offered for sale the same shall be appraised, a separate appraisal to be placed on each lot. Such surveyed and platted land may then be sold in the same manner and upon the same terms and conditions as other state lands are sold.

History: En. Sec. 67, Ch. 60, L. 1927; re-en. Sec. 1805.67, R.C.M. 1935; R.C.M. 1947, 81-904.

77-2-311. Survey and plat of shore lands. The board may in its discretion cause any part of the lands bordering on lakes described in 77-2-303(3) and on navigable streams which are reserved from sale to be surveyed and platted into blocks and lots, the lots to be not less than 125 feet in width, the width to be measured in the general direction of the abutting water front; but in all such surveys and plats the strip of 100 feet in width along the water front, referred to in 77-2-303(3)(a), shall be reserved for the use and enjoyment of the public.

History: En. Sec. 66, Ch. 60, L. 1927; re-en. Sec. 1805.66, R.C.M. 1935; amd. Sec. 7, Ch. 257, L. 1965; R.C.M. 1947, 81-903(part).

77-2-312. Subdivision of lands in or near municipalities. (1) All lands within the limits of any town or city or within 3 miles of such limits shall be subdivided into lots or tracts of not more than 5 acres each before being offered for sale and the lots must then be sold alternately at regular sales of state lands.

(2) When such tracts of 5 acres or less have been sold, the board shall, whenever deemed necessary, cause the plat thereof to be filed for record with the county clerk and recorder of the county in which the land is situated, but if the same purchaser bids in two or more adjoining lots or tracts, all the lots so purchased shall at the option of the purchaser be included in one certificate of purchase.

History: En. Sec. 68, Ch. 60, L. 1927; re-en. Sec. 1805.68, R.C.M. 1935; amd. Sec. 41, Ch. 100, L. 1973; R.C.M. 1947, 81-905(part).

77-2-313. Land subject to taxation. (1) State lands purchased from the state are subject to taxation to the full value thereof. The department of revenue shall assess the purchaser for the full value of the land on January 1 following the date of purchase. The holder of certificates of purchase to lands within irrigation districts is liable for the entire tax levied against the land thereunder on account of such irrigation district.

(2) The improvements on the land shall be assessed and taxed as other improvements on farm lands.

(3) On or before January 15 of each year, the department shall furnish the department of revenue or its agent in each county with a complete list of all state lands sold in his county during the year ending on the previous December 31. This list shall show the name and address of the purchaser, the legal description of the land, and the acreage contained therein.

History: En. Sec. 92, Ch. 60, L. 1927; re-en. Sec. 1805.92, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1953; amd. Sec. 52, Ch. 391, L. 1973; amd. Sec. 67, Ch. 428, L. 1973; amd. Sec. 7, Ch. 388, L. 1975; R.C.M. 1947, 81-928.

77-2-314. Reversion of lands to state. If any lands sold under this title revert to the state for any reason, the department shall notify the department of revenue and the county treasurer of the county in which the land is situated of that fact. Upon the receipt of the notice, the department of revenue shall cancel any assessment of the land for that year, and the county treasurer shall cancel all tax liens against the land.

History: En. Sec. 94, Ch. 60, L. 1927; re-en. Sec. 1805.94, R.C.M. 1935; amd. Sec. 53, Ch. 391, L. 1973; amd. Sec. 68, Ch. 428, L. 1973; R.C.M. 1947, 81-930.

77-2-315. Participation in irrigation districts — lien status of land. (1) A purchaser of state lands is hereby authorized and empowered to sign any petition that he may desire to sign for the creation of an irrigation district and the inclusion of the land purchased from the state in such irrigation district and any other petition relating to irrigation districts affecting the land so purchased by him from the state. Such petition or petitions shall have the effect of making all the interest that he then has in such land purchased from the state and all interest which he may subsequently acquire therein subject to the same liens and charges as privately owned lands under such irrigation district; and if for any reason his certificate to such state lands and his rights thereunder should be canceled and later such certificate be reinstated or a new certificate issued, such liens and charges shall stand against the interest in such lands of the holder of such certificate.

(2) The board for and on behalf of the state of Montana is hereby empowered to sign a petition for the inclusion of any lands belonging to the state in an irrigation district organized or to be organized for the purpose of cooperating with the United States under the federal reclamation laws or any act of congress relating to reclamation projects and to sign any petition for the execution of a contract between such district and the United States. The interest of the state in any lands within an irrigation district shall not be subject to assessment or taxation for any purpose whatever, nor shall the state be liable for the payment of any costs or charges whatever arising from the fact that its lands are included within an irrigation district.

(3) The interest of a purchaser of state lands in the land purchased shall be subject to the same liens as other real estate; provided, however, that in the case of sale, only the interest of the purchaser or of the assignee shall be sold. In the case of any sale under the provisions of this section, including the sale for taxes, the purchaser shall succeed to all the rights of the purchaser from the state under the certificate of purchase and a new certificate of purchase shall be issued to the person entitled thereto upon satisfactory proof being submitted to the board. In the case of sale under execution or decree of court such new certificate of purchase shall not be issued by the board until the period of redemption from such sale has expired and the sheriff's deed has been issued. In the case of sale for taxes, the new certificate shall not be issued until the tax deed has been issued.

History: En. Sec. 93, Ch. 60, L. 1927; amd. Sec. 1, Ch. 58, L. 1929; re-en. Sec. 1805.93, R.C.M. 1935; R.C.M. 1947, 81-929.

77-2-316. Sale of state lands to United States. (1) Any state lands needed by the United States in the construction of projects for the control of floods, river regulation, conservation of water, irrigation, and reclamation works or transmission or distribution of electric energy shall, upon application to the board, be sold and conveyed to the United States at the price per acre fixed by the board of appraisers appointed by the United States to appraise and value lands to be included within such projects and needed by the United States in the construction thereof, subject, however, to the approval of the board and the price limitations of The Enabling Act and the state constitution.

(2) Lands needed by the United States for any of the purposes specified in subsection (1) or 77-2-108 may be appraised or reappraised without appraising the remaining state lands in the county in which they are located. The lands shall be appraised at their full market value.

(3) The provisions of this section, 77-2-108, and 77-2-304(2) governing the sale of state lands to the United States also apply to the sale of state lands for projects financed by the United States under the administration of the department of natural resources and conservation, except as to appraisal by the United States.

History: En. Sec. 56, Ch. 60, L. 1927; amd. Secs. 1, 2, 3 and 4, Ch. 37, Ex. L. 1933; re-en. Sec. 1805.56, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1945; amd. Sec. 52, Ch. 428, L. 1973; R.C.M. 1947, 81-801(1), (5), (6).

77-2-317 through 77-2-320 reserved.

77-2-321. Sales to be at public auction. All sales of state lands shall be only at public auction held at the county courthouse of the county in which the lands are located. In case no suitable room can be found in such courthouse at the time for holding the sale, then the sale may be transferred to a more convenient place within a reasonable distance of such courthouse by public announcement made at the courthouse at the time fixed for beginning the sale.

History: En. Sec. 72, Ch. 60, L. 1927; re-en. Sec. 1805.72, R.C.M. 1935; amd. Sec. 3, Ch. 184, L. 1961; R.C.M. 1947, 81-909.

77-2-322. Notice of sale. (1) The department shall give notice of each sale by publication in a newspaper of general circulation in the county where the sale is to be held, once each week through the 4 consecutive weeks preceding the date of sale. The notice shall give the day, date, and time of the beginning of the sale and contain a list of all the tracts to be offered for sale showing the township and range in which they are located, describing them with reference to section number and subdivision of the section or with reference to block and lot if surveyed, the number of acres in unplatted lands, and the appraised value per acre and the appraised value of each lot. As a general rule, nonirrigable farming lands shall be listed in quarter sections; grazing lands may be listed in larger tracts not exceeding one section.

(2) For the convenience of the bidders, the department may assign to the tracts advertised a consecutive series of sales numbers and show the sales number of each tract in the notice of sale.

(3) The notice shall also give the terms and conditions of sale and any additional information the department considers useful.

History: En. Sec. 73, Ch. 60, L. 1927; re-en. Sec. 1805.73, R.C.M. 1935; amd. Sec. 4, Ch. 184, L. 1961; amd. Sec. 57, Ch. 428, L. 1973; R.C.M. 1947, 81-910.

77-2-323. Sale procedure and limitation. (1) At the time fixed for the sale, the lands shall be offered for sale at auction in the order they appear in the notice of sale. Under the direction of the department the lands shall be sold to the highest qualified bidder under the following restrictions:

(a) No lands may be sold for less than the appraised value.

(b) Tillable lands capable of producing agricultural crops may not be sold for less than $10 per acre.

(c) Lands principally valuable for grazing purposes may not be sold for less than $5 per acre.

(2) The lands shall be sold as nearly as practicable according to the subdivisions in which they are advertised, and care shall be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways.

(3) The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

(4) If any successful bidder at a sale refuses or neglects to make the initial payment required to be made on the land purchased by him, he shall forfeit to the state not less than $50 or more than $1,000 to be determined by the board according to the circumstances of the case. If such forfeiture is not paid when notice of the amount of the forfeiture has been served by the department, the attorney general shall sue for the recovery thereof in the name of the state.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; re-en. Sec. 1805.75, R.C.M. 1935; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973; R.C.M. 1947, 81-912(part).

77-2-324. Preference to lessee of land. The lessee of the land need not make a higher bid than others, but he shall, if bidding an equal amount, be given the preference.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; re-en. Sec. 1805.75, R.C.M. 1935; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973; R.C.M. 1947, 81-912(part).

77-2-325. Settlement for improvements. If any state land is sold on which there are improvements belonging to a lessee and some person other than the lessee is the purchaser, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the issuance of the certificate of purchase. The provisions of 77-6-301 through 77-6-306 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the purchaser. If settlement is not reached within 6 months of date of sale, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration.

History: En. Sec. 83, Ch. 60, L. 1927; re-en. Sec. 1805.83, R.C.M. 1935; amd. Sec. 9, Ch. 257, L. 1965; amd. Sec. 61, Ch. 428, L. 1973; R.C.M. 1947, 81-919.

77-2-326. Time of possession. In the case of lands under lease the purchaser shall be given possession by the state on March 1 next succeeding the date of sale and not before unless the lease expires prior to that date, except through special agreement between the purchaser and the lessee.

History: En. Sec. 84, Ch. 60, L. 1927; re-en. Sec. 1805.84, R.C.M. 1935; R.C.M. 1947, 81-920.

77-2-327. Certificate of purchase. (1) Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the department shall execute and mail to the purchaser a certificate of purchase signed by the governor as president of the board and by the commissioner of state lands and attested by the seal of the board. The certificate of purchase shall contain the date of sale, the name and post-office address of the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid, and the amount and due date of each installment of principal and interest to the time of maturity. The certificate shall reserve the easements for rights-of-way granted by the statutes in favor of the United States and other easements that may have been granted by the board and shall contain the reservations in favor of the state provided for in 77-2-304(1) relating to coal, oil, and mineral rights in the land.

(2) The certificate shall also contain information in regard to the lien of the state on crops and improvements on the land for installments of principal and interest and taxes and any additional conditions, agreements, and information the board considers necessary in order to carry out the intent of this part.

History: **En. Sec. 85, Ch. 60, L. 1927; re-en. Sec. 1805.85, R.C.M. 1935; amd. Sec. 62, Ch. 428, L. 1973; R.C.M. 1947, 81-921.**

77-2-328. Additional rules. The board may prescribe such additional rules for the conduct of these sales as in its judgment the interests of the state may demand.

History: **En. Sec. 76, Ch. 60, L. 1927; re-en. Sec. 1805.76, R.C.M. 1935; R.C.M. 1947, 81-913.**

77-2-329. Terms of payment. (1) Every purchaser of state land shall pay on the day of sale that portion of the purchase price as he may desire, but in no case less than 10% of the total sales price. In case the balance on the purchase price is not an exact multiple of $25, then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of $25.

(2) The balance of the purchase price shall draw interest at the rate set by the board, but in no instance shall the rate be less than 5% per year, payable annually, and the balance of the purchase price itself shall be payable through a period of 33 years on the amortization plan. This plan is defined as being that plan under which part of the principal is required to be paid each time interest becomes due and payable and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full. However, the amount of the last installment may vary from the other installments to the extent resulting from disregarding fractional cents in the previous installments. The balance of the purchase price on town and city lots shall be payable on the amortization plan through a period of 20 years, but the board may at any time fix a shorter period than 20 years for the payment of the balance on town and city lots. Different periods of time may be established for different towns and cities as the best

interests of the state demand. The board shall annually review the interest rate prior to December 31 of each year and fix the interest rate for all contracts to be entered into during the succeeding year.

History: En. Sec. 79, Ch. 60, L. 1927; re-en. Sec. 1805.79, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1939; amd. Sec. 8, Ch. 257, L. 1965; amd. Sec. 10, Ch. 22, L. 1971; amd. Sec. 59, Ch. 428, L. 1973; amd. Sec. 1, Ch. 191, L. 1974; R.C.M. 1947, 81-915.

77-2-330. Computation of interest and payment schedule. The balance of the purchase price shall draw interest from the date on which the sale was confirmed and approved by the board, and all installments on principal and interest shall become due and payable on that date in each succeeding year until payment has been made in full.

History: En. Sec. 86, Ch. 60, L. 1927; re-en. Sec. 1805.86, R.C.M. 1935; R.C.M. 1947, 81-922.

77-2-331. Manner of making payments. (1) The department is not required to accept fractional payments of the installments on certificate of purchase on account of the complications arising from the division of payments.

(2) The purchaser may make payment of one or more installments before the same becomes due, but unless such payments are made at least 6 months before the installments become due, no reduction may be made in the interest payments. If installments on principal and interest are paid more than 6 months prior to the due date, the interest from the date of such payment shall be figured upon the balance of the principal unpaid after the advance payment has been made up to the date on which it comes due.

(3) If for any reason any installment is not paid when due, the total of that installment, including payment on the principal and payment on interest, shall draw penalty interest at the rate of 6% per annum from the date due until the date actually paid.

(4) Payment may be made in full at any time before maturity by paying the balance on the principal and interest accrued up to the date of such payment.

History: En. Sec. 87, Ch. 60, L. 1927; re-en. Sec. 1805.87, R.C.M. 1935; amd. Sec. 63, Ch. 428, L. 1973; R.C.M. 1947, 81-923.

77-2-332. Procedure in case of default. (1) If any purchaser or assignee of state land defaults for a period of 30 days or more in the payment of any of the installments due on his certificate of purchase, the certificate is subject to cancellation. The department shall mail to him at his last known post-office address a notice of default and pending cancellation. The notice shall give him 60 additional days from the date of mailing the notice in which to make payment of the delinquent installment or installments with penalty interest.

(2) If he fails to make the payment within 60 days, the certificate of purchase shall from that date and without further notice be void, the duplicate of the certificate in the office of the department shall be canceled, and the land under the certificate shall revert to and become the property of the state to the same extent as other state lands and shall be open to lease and sale.

(3) All buildings, fences, and other improvements placed thereon subsequent to the date of execution of the certificate of purchase shall be and

remain the property of the purchaser named in the certificate of purchase or of his heirs, assigns, or devisees and may be removed from the land at any time within 90 days after the date of the cancellation. If the buildings, fences, and other improvements are not removed prior to the expiration of the 90-day period, they become the property of the state.

(4) In case of cancellation of certificate of purchase or surrender of certificate of purchase and where the land is again open to lease, the former lessee has the prior right to lease the tract at the existing rate or at the rate set by competitive bidding if such occurs.

History: En. Sec. 88, Ch. 60, L. 1927; re-en. Sec. 1805.88, R.C.M. 1935; amd. Sec. 4, Ch. 141, L. 1939; amd. Sec. 1, Ch. 159, L. 1951; amd. Sec. 64, Ch. 428, L. 1973; R.C.M. 1947, 81-924.

77-2-333. Reinstatement of canceled certificates of purchase. (1) In all cases where a certificate of purchase of state lands has been canceled and annulled as provided by law and the lands under such certificate have not been resold to another purchaser, the board may in its discretion reinstate the canceled certificate upon:

(a) proper application made in writing by the original purchaser or his heirs, assigns, or devisees, filed within 1 year and 6 months from such cancellation;

(b) payment of all delinquent installments of principal and interest on the certificate, together with penalty interest at the rate of 6% per annum upon all such delinquent installments from the date due until the date of actual payment; and

(c) the furnishing of proof from the county treasurer showing that there are no tax liens against the land.

(2) This reinstatement shall not have the effect of canceling any lease that the state may have issued on the land or affecting any of the provisions of said lease.

History: En. Sec. 89, Ch. 60, L. 1927; amd. Sec. 1, Ch. 101, L. 1929; re-en. Sec. 1805.89, R.C.M. 1935; R.C.M. 1947, 81-925.

77-2-334. Assignment of certificate. Certificates of purchase may be assigned to a citizen of the United States or to a person who has declared his intention to become a citizen or to a corporation organized under the laws of this state. Such assignments shall be made on forms prescribed by the department, shall be duly acknowledged as other conveyances of real estate, and shall be executed in duplicate, one copy to be filed and retained in the office of the department and one copy to be retained by the assignee. A person is not qualified to receive an assignment if the lands he has already purchased from the state together with the lands included in the assignment exceed one section. The assignee must in all respects possess the same qualifications as an original purchaser.

History: En. Sec. 90, Ch. 60, L. 1927; re-en. Sec. 1805.90, R.C.M. 1935; amd. Sec. 65, Ch. 428, L. 1973; R.C.M. 1947, 81-926.

77-2-335. Lost certificate. If a certificate of purchase to state lands is lost or is wrongfully withheld by any person from the owner thereof, the rightful owner may apply to the board for the issuance of a substitute certificate. This application shall be accompanied by an affidavit from the owner of the certificate setting forth the facts in regard to the loss or unlawful withholding of the certificate and by a certificate from the county clerk and recorder of the county in which the land is located showing all instruments of record in his office affecting the title to the land under the certificate. The board shall issue a substitute certificate of purchase to the applicant if in the judgment of the board the facts warrant its issue.

History: En. Sec. 91, Ch. 60, L. 1927; re-en. Sec. 1805.91, R.C.M. 1935; amd. Sec. 66, Ch. 428, L. 1973; R.C.M. 1947, 81-927.

77-2-336. Lien on improvements and crops for amount due state. (1) The state has a lien prior and superior to all other liens, except threshermen's liens and seed liens as specified in 71-3-701 and 71-3-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due, and other charges, as evidenced by the original loan contract and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. This lien is upon all buildings, structures, fences, and all other improvements upon the lands so sold and upon all crops growing upon any of these lands and also upon such crops after they have been separated from the lands for all due and delinquent installments of principal and interest and penalty interest and taxes under the certificate of purchase and also for all installments becoming due during the calendar year in which the crop is harvested, and this lien is hereby expressly reserved.

(2) Any person purchasing or otherwise acquiring the improvements or crops or any part thereof takes them subject to the lien.

(3) Any representative of the department or the sheriff of the county in which the land is located or his deputy may demand of the purchaser or his agent payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand or any representative of the department may immediately seize the improvements and crops, and upon giving 3 days' notice, sell and dispose of, either at private or public sale, sufficient of the crops or improvements or of both to pay the amounts due the state, together with cost and expenses of seizure and sale.

History: En. Sec. 81, Ch. 60, L. 1927; re-en. Sec. 1805.81, R.C.M. 1935; amd. Sec. 60, Ch. 428, L. 1973; R.C.M. 1947, 81-917.

77-2-337. Disposition of sale proceeds. (1) The proceeds from the lands sold, including all subsequent payments on the principal, shall be credited to the permanent fund arising from the grant to which it belongs and shall become and forever remain an inseparable and inviolable part thereof.

(2) All payments on interest shall be credited to the proper income fund and shall be available for use as provided by law.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; re-en. Sec. 1805.75, R.C.M. 1935; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973; R.C.M. 1947, 81-912(4).

77-2-338 through 77-2-340 reserved.

77-2-341. Patents. When the purchase price has been paid in full together with interest according to the certificate, the owner thereof shall be entitled to receive a patent for the land under such certificate.

History: En. Sec. 95, Ch. 60, L. 1927; re-en. Sec. 1805.95, R.C.M. 1935; R.C.M. 1947, 81-931.

77-2-342. Execution of patents. (1) The governor and, in his absence or inability, the lieutenant governor shall execute deeds or patents of conveyance transferring without covenants any lands sold by the board under the laws of this state when full payment has been made therefor.

(2) The deed or patent shall be attested by the secretary of state, countersigned by the commissioner of state lands, and have the great seal of the state and the seal of the board thereto attached but need not be acknowledged.

History: En. Sec. 96, Ch. 60, L. 1927; re-en. Sec. 1805.96, R.C.M. 1935; amd. Sec. 69, Ch. 428, L. 1973; R.C.M. 1947, 81-932(part).

77-2-343. Patent provisions. (1) Such deed or patent shall contain the reservation of easements for rights-of-way to the United States, reservation of all minerals in the land as provided in 77-2-304(1), and all other reservations to which the particular land conveyed is subject.

(2) If the land is located within the boundaries of a federal irrigation project, the patent shall contain a lien clause substantially in the following form: "The land hereby conveyed is located within the boundaries of a federal irrigation project and is subject to all liens which the United States may have thereon by reason of its being located under such irrigation project.

(3) This section does not require any reservation in a patent which was not an express or implied reservation in the certificate of purchase pursuant to which the patent is issued. The statutes in effect when such certificate of purchase was issued must govern.

History: En. Sec. 96, Ch. 60, L. 1927; re-en. Sec. 1805.96, R.C.M. 1935; amd. Sec. 69, Ch. 428, L. 1973; R.C.M. 1947, 81-932(part).

77-2-344. Copy of deed or patent as evidence. A certified copy of the record of any such deed or patent shall be received in evidence in all courts of record of this state the same as the original.

History: En. Sec. 96, Ch. 60, L. 1927; re-en. Sec. 1805.96, R.C.M. 1935; amd. Sec. 69, Ch. 428, L. 1973; R.C.M. 1947, 81-932(part).

77-2-345. Limitation for cancellation of patent. No action shall be brought to vacate or cancel any patent issued by the state after the expiration of 2 years from the date of such patent except upon the ground of fraud.

History: En. Sec. 97, Ch. 60, L. 1927; re-en. Sec. 1805.97, R.C.M. 1935; R.C.M. 1947, 81-933.

CHAPTER 3

ROCK, MINERAL, COAL, OIL, AND GAS RESOURCES

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Part 1

Prospecting Permits and Mining Leases

77-3-101. Definitions. In this part the following definitions apply:

(1) "Full market value" means the highest net value of products of mining operations in United States markets, less cost of transportation and refining, not including as a deduction any cost of producing or treating at the mine.

(2) "Gems" means sapphires, rubies, and other stones commonly known as "precious stones" or "semiprecious stones", but does not mean stones or other earth materials commonly used in building or construction work.

(3) "Metalliferous minerals" means gold, silver, lead, zinc, copper, platinum, iron, and all other metallic minerals.

(4) "Mining" means the carrying on of operations of any kind for the purpose of extracting from the earth ore and other earth material containing metalliferous minerals or gems and includes operations of any kind for the extraction from ores and other earth material of metalliferous minerals or gems.

(5) "Mining lease" means a lease issued by the board for the prospecting for or mining of metalliferous minerals or gems.

(6) "Mining lessee" means the holder of a mining lease whether the holder is the original lessee under the lease or holds the lease as successor of the original lessee.

(7) "Returns" means the net amount received by the shipper from products of mining operations after deducting transportation costs, smelting charges and deductions, and other treatment costs, not including as a deduction any cost of producing or treating at the mine.

History: En. Sec. 1, Ch. 148, L. 1937; amd. Sec. 35, Ch. 428, L. 1973; R.C.M. 1947, 81-601.

77-3-102. Mining leases authorized. (1) The board may, in its discretion, subject to the other provisions of this part, lease state lands, including the beds of navigable streams and the beds of navigable bodies of water and the reserved mineral rights of the state in lands sold or leased by the state, to any person, association, or corporation, for the purpose of prospecting for or mining metalliferous minerals or gems.

(2) These leases may be for a period of time determined by the board, subject to limitations contained in the grants by which the state has acquired title to lands or mineral rights so leased.

(3) Leases issued under this part shall give the lessee, so long as he complies with the terms and conditions of the lease, the exclusive right of possession of the lands or mineral rights leased, subject to any reservations contained in the leases.

(4) In short the board in making the leases may exercise business discretion, so long as this part is not violated.

History: (1), (2)En. Sec. 2, Ch. 148, L. 1937; amd. Sec. 36, Ch. 428, L. 1973; Sec. 81-602, R.C.M. 1947; (3),(4)En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; Sec. 81-603, R.C.M. 1947; R.C.M. 1947, 81-602, 81-603(part).

77-3-103. Prospecting permits authorized. Prospecting permits without lease may be issued by the board upon the payment of the issuance fee under 77-1-302. The permittee shall also pay an annual fee established by the department and approved by the board at the end of each year during the life of the permit. A permit shall provide for due diligence in the work of prospecting during the life of the permit.

History: En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R.C.M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973; R.C.M. 1947, 81-601.1(part).

77-3-104. Notice of lease or permit approval. Upon the approval of an application for a prospecting permit or a mining lease under this part, the department shall promptly give written notice, by ordinary mail, to the lessee or permittee and to any holder of an agricultural or grazing lease embracing the same land or to any holder of a certificate of purchase or patent embracing the same land. The notice shall be addressed to the permittee, mining lessee, agricultural or grazing lessee, purchaser or patentee at his last known post-office address.

History: En. Sec. 16, Ch. 148, L. 1937; amd. Sec. 48, Ch. 428, L. 1973; R.C.M. 1947, 81-616.

77-3-105. Assignment of leases or permits. In case of the assignment of a mining lease or a prospecting permit by the holder thereof, the mining lessee or permittee executing the assignment is not relieved of any responsibility for operations under the lease or prospecting permit until:

(1) the financial and moral responsibility of the assignee has been approved by the board; and

(2) there is deposited with the department:

(a) the assignment or an executed copy thereof;

(b) an instrument executed by the sureties upon any bonds then held by the board in connection with the mining lease or permit and then in force, consenting to the assignment and containing the agreement of the sureties to be bound by the bonds under the assignment or new bonds conforming to all the requirements of 77-3-119; and

(c) a fee prescribed under 77-1-302.

History: **En. Sec. 13, Ch. 148, L. 1937; amd. Sec. 8, Ch. 22, L. 1971; amd. Sec. 45, Ch. 428, L. 1973; R.C.M. 1947, 81-613.**

77-3-106. Disposition of royalties, fees, and penalties. All fees and penalties collected under this part shall be credited to the state general fund; all rentals shall be credited to the income fund of the grant to which the land belongs; and all moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land belongs under each particular permit or lease; provided, however, that all rentals and royalties received from "mortgage lands" shall be credited to the same fund or funds as other receipts from such lands and that all rentals and royalties received under or in connection with a lease or permit on other lands or mineral rights not acquired through any grant to the state of Montana from the United States shall be paid into the same funds into which such receipts are paid when the land is part of the grant for the benefit of the public schools of the state of Montana.

History: **En. Sec. 17, Ch. 148, L. 1937; R.C.M. 1947, 81-617.**

77-3-107 through 77-3-110 reserved.

77-3-111. Applications for mining lease. Application for a mining lease shall be made to the department on a form prescribed by it.

History: **En. Sec. 6, Ch. 148, L. 1937; amd. Sec. 7, Ch. 22, L. 1971; amd. Sec. 40, Ch. 428, L. 1973; R.C.M. 1947, 81-606.**

77-3-112. Examination of lands prior to leasing. (1) Before the board leases any lands for the mining of metalliferous metals or gems, the department shall investigate the character of the lands and the nature and possible extent of the mineral deposits therein for the purpose of determining whether those lands are of such a character as to warrant the issuance of a mining lease thereon and for the purpose of determining the amount of royalty and other rentals or considerations for which the lands should be leased for mining purposes under this part.

(2) Upon the filing of an application for a mining lease the board may, if the lands covered by the application have not been examined by the

department, require the applicant for the lease to deposit with the department an amount of money, not exceeding $500 in any one case, which in its judgment will cover the cost of a special examination to enable the board to pass upon the application in accordance with this part. Such deposit shall be used to reimburse the state for the actual cost of the examination, and any portion of the deposit not required for such reimbursement shall, upon the approval or rejection of the application, be repaid to the applicant by the department.

(3) The department shall make and preserve complete records of all such examinations.

History: En. Sec. 11, Ch. 148, L. 1937; amd. Sec. 43, Ch. 428, L. 1973; R.C.M. 1947, 81-611.

77-3-113. Quantity of lands covered by lease. A mining lease shall cover the quantity of ground the board determines to be reasonable and consistent with the character of the ground, the type of deposit or deposits for which the lands are to be mined, and the character and size of the operation contemplated, necessary, or reasonable in good mining practice for the profitable recovery of the metalliferous minerals or gems therefrom.

History: En. Sec. 5, Ch. 148, L. 1937; amd. Sec. 39, Ch. 428, L. 1973; R.C.M. 1947, 81-605.

77-3-114. Restrictions on mining leases on lands already subject to coal, oil, or gas lease. In the case of lands covered by a lease for the mining of coal, oil, or gas, no lease for the mining upon any such land for metalliferous minerals and/or gems shall be issued to any person, association of persons, or corporation, other than the holder of such coal, oil, or gas lease while such coal, oil, or gas lease is in force, except with the written consent of the holder of such coal, oil, or gas lease.

History: En. Sec. 10, Ch. 148, L. 1937; R.C.M. 1947, 81-610.

77-3-115. Lease provisions. (1) A lease may contain reasonable provisions for preliminary prospecting periods and shall contain reasonable requirements for the prosecution of work during the prospecting period (if any) and for the prosecution of mining after the prospecting period.

(2) It may provide for the payment of rentals in conjunction with the work requirements or may prescribe cash rentals as an alternative or otherwise as the board considers best.

(3) It shall specify the term of the lease, the royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a time limited in the lease, remove property placed upon the leased lands by him in the event of the termination of the lease by forfeiture or by lapse of time.

(4) It may also contain other provisions the board and the lessee agree upon, not inconsistent with this part.

History: En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; R.C.M. 1947, 81-603(part).

77-3-116. Royalty provisions. In every mining lease the board shall reserve to the state a royalty which shall, together with other considerations to be paid by the mining lessee, constitute the full market value as ascertained by the board of the leasehold interest conveyed by the lease. This royalty may not be less than 5% of the returns from or of the full market value of the metalliferous minerals or gems recovered by the lessee from the state lands or reserved mineral rights covered by the lease.

History: En. Sec. 4, Ch. 148, L. 1937; amd. Sec. 2, Ch. 205, L. 1947; amd. Sec. 38, Ch. 428, L. 1973; R.C.M. 1947, 81-604(1).

77-3-117. Modification of lease provisions. The board, by agreement with the permittee or lessee, may, in its discretion and upon such terms as it considers best, amend or modify the terms and conditions within the limitations of this part or extend the term of any lease or prospecting permit issued under this part, subject to the limitations contained in 77-3-102(1) and (2).

History: En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; R.C.M. 1947, 81-603(part).

77-3-118. Restrictions on removal of minerals and gems during preliminary prospecting period. No mining lessee may, during any preliminary prospecting period contained in any lease, remove any metalliferous minerals or gems from the leased premises, except as are necessary for the proper testing and sampling of the lands or mineral rights, and except as are permitted by the board.

History: En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; R.C.M. 1947, 81-603(part).

77-3-119. Bonds to state. The board may, at the time of the execution and delivery of a mining lease or at any time during the life of the lease, require a mining lessee to file with the department, for the benefit of the state, a bond or bonds conditioned to protect the rights of the state, particularly in the payment to the proper officer of the state of the royalties reserved in the mining lease. The bond or bonds shall be in a form and amount prescribed by the board. The board may at any time require new or additional bonds if in its discretion the interests of the state are not adequately protected by the bond or bonds previously filed.

History: En. Sec. 7, Ch. 148, L. 1937; amd. Sec. 41, Ch. 428, L. 1973; R.C.M. 1947, 81-607.

77-3-120. Bonds to protect prior purchasers, lessees, or contractees. (1) If the lands at the time of the issuance of a mining lease have been sold, are under contract of sale, or have been leased for agricultural, grazing, or other purposes, the board shall provide against the infringement of the rights of the prior purchaser, contractee, or lessee and among other things may at any time require the mining lessee to file with the department a corporate surety bond in a reasonable amount fixed by the board, conditioned to protect the rights of the prior purchaser, contractee, or lessee.

(2) The form of the bond shall be prescribed by the board, and the bond shall run to the state for the benefit of the prior purchaser, contractee, or lessee. New or additional bonds may be required by the board at any time.

(3) Suit may be brought upon the bond by any such prior purchaser, contractee, or lessee for alleged violation of the terms of the bond by the mining lessee. Such suit shall be brought by the claimant in the name of the

state for the use and benefit of the claimant, and any recovery upon the bond shall be paid to the claimant.

History: En. Sec. 8, Ch. 148, L. 1937; amd. Sec. 42, Ch. 428, L. 1973; R.C.M. 1947, 81-608.

77-3-121. Pooling agreements and unit plans of operation. (1) The board may enter into agreements for the pooling of acreage or yardage with others holding the mineral rights in adjoining lands for unit operation of placer mining and the apportionment of royalties on a cubic yardage or area basis in the case of placer mining deposits lying partly on land in which the state holds the mining rights and partly on land in which others hold the mining rights.

(2) From each cleanup of values under such unit operations in which any yardage or area mined on lands to which the state holds the mineral rights is included, the state is entitled to royalties computed on that proportion of the whole value of recoveries from the cleanup as the yardage or area mined from lands included in the agreement in which the state holds the mining rights bears to the total yardage or area mined and included in the cleanup.

(3) The board may also enter into agreements for the unit operation of such placer mining deposits and the apportionment of royalties upon any other equitable basis the board considers in the best interest of the state. The agreements may not change the percentage of royalties to be paid to the state under the unit operations from the percentage fixed in the lease or to a smaller percentage than the 5% minimum under 77-3-116.

History: En. Sec. 4, Ch. 148, L. 1937; amd. Sec. 2, Ch. 205, L. 1947; amd. Sec. 38, Ch. 428, L. 1973; R.C.M. 1947, 81-604(2).

77-3-122. Sales, contracts for sale, and other leases subject to mining leases. Any sale of state lands, any contract for the sale of state lands, and any lease of state lands made or issued by said board during the life of any mining lease issued under the provisions of this part shall be subject to such mining lease during the life thereof, and no bond shall be required of such mining lessee for the protection of any such purchaser, contractee, or other lessee unless provision therefor shall be made in such mining lease.

History: En. Sec. 9, Ch. 148, L. 1937; R.C.M. 1947, 81-609.

77-3-123. Failure of title. In issuing mining leases, the board and the state have leased only such right, title, and interest as the state has in the lands, metalliferous minerals, or gems therein contained. Neither the state, the board, nor any representative, agent, or employee of the state or the board are under any liability for the failure of the title of the state, in whole or in part, to the lands, metalliferous minerals, or gems covered by the lease.

History: En. Sec. 12, Ch. 148, L. 1937; amd. Sec. 44, Ch. 428, L. 1973; R.C.M. 1947, 81-612.

77-3-124 through 77-3-130 reserved.

77-3-131. Limitations on prospecting permits. A permit shall be limited to prospecting for metalliferous minerals or gems and no permittee may remove from any lands or mineral rights covered by the permit any metalliferous minerals or gems except such as are necessary for the proper testing and sampling of the lands or mineral rights and except as are permitted by the board.

History: En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R.C.M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973; R.C.M. 1947, 81-601.1(part).

77-3-132. Leasing privileges of permittee. (1) During the life of any permit the permittee may apply for a lease of the lands or mineral rights covered by the permit, and if a lease is granted it shall be in the form and subject to all the terms and conditions specified in this part, as in the case of a mining lease issued under this part. The permittee has the preference right to a lease, upon such terms as the board considers just, subject to this part, and in any event the permittee has preference without competitive bidding and upon the most favorable terms permitted under this part to 40 contiguous acres.

(2) If some other person makes a better bid for a mining lease upon the land covered by the permit and if the board awards a mining lease to a better bidder, the board shall also require such mining lessee to pay to the permittee, prior to the issuance of the lease, the full value of all the work the permittee has performed upon the land under his permit in connection with his prospecting and exploration work. Within 30 days from the date the board gives the permittee notice of the issuance of the mining lease or within such further time as the board upon good cause shown allows, the permittee may remove from the land any machinery, equipment, improvements, and other property placed thereon by him.

History: En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R.C.M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973; R.C.M. 1947, 81-601.1(part).

Part 2

Nonmetallic Minerals, Excluding Coal, Oil, and Gas

77-3-201. Nonmetallic mineral leases authorized. When there are found upon state lands deposits of stone, limestone, oil shale, clay, bentonite, calcite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand, or phosphate, sodium, potash, sulphur, fluorite or barite, or any other nonmetallic minerals, but not including coal, oil, or gas, valuable for building, mining, or other commercial purposes, the board may in its discretion issue permits or leases to private persons for the removal and disposition of the above-named deposits upon such terms and conditions as the board may determine.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

77-3-202. Fee. The fee for issuing the lease is the same as for an oil and gas lease.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

77-3-203. Duration of lease. No such lease shall be made for a longer term than 10 years.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

77-3-204. Royalty provisions. (1) All such leases shall be upon a royalty basis calculated upon a gross value by weight or cubic measurement as is most favorable for the particular substance being mined or extracted from the lands. The gross value shall be determined at the mine or site of operation, and the rates shall be the same that ordinarily would be charged by private owners under similar circumstances or as in the determination of the board is fair and reasonable.

(2) The board may demand a cash deposit to guarantee the payment of the royalties, a surety bond, or both a cash deposit and bond, as the board may determine.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

77-3-205. Report of lessee and payment of royalty. (1) On or before the last day of each month, every holder of a producing lease under this part shall make a report to the department on a form the department prescribes showing:

(a) the amount of substances mined or extracted from the lands in the preceding month;

(b) the price obtained;

(c) the total amount of sales; and

(d) any additional information required.

(2) The report shall be verified by affidavit of the lessee or some responsible person having knowledge of the facts and shall be accompanied by payment of the amount to the state as royalty for the month covered by the report.

History: En. Sec. 53, Ch. 60, L. 1927; re-en. Sec. 1805.53, R.C.M. 1935; amd. Sec. 2, Ch. 194, L. 1945; amd. Sec. 50, Ch. 428, L. 1973; R.C.M. 1947, 81-702(part).

77-3-206. Disposition of royalties, fees, and penalties. The royalties, fees, and penalties received under these leases shall be credited to the various funds to which they properly belong in the same manner as is now provided for crediting the same under oil and gas leases.

History: En. Sec. 53, Ch. 60, L. 1927; re-en. Sec. 1805.53, R.C.M. 1935; amd. Sec. 2, Ch. 194, L. 1945; amd. Sec. 50, Ch. 428, L. 1973; R.C.M. 1947, 81-702(part).

77-3-207. Land leased for other purposes. Such portions of the section or other subdivision of the land on which such deposits are located as are not needed for the quarrying or digging and removal of the stone, limestone, oil shale, clay, sand, or gravel may be leased for grazing or agricultural purposes the same as other state lands. In the case that grazing or agricultural leases are issued they shall provide for a right-of-way across the land for the removal of the stone, limestone, oil shale, clay, gravel, sand, or other deposits, but the rights of the lessee shall also be duly protected.

History: En. Sec. 54, Ch. 60, L. 1927; re-en. Sec. 1805.54, R.C.M. 1935; R.C.M. 1947, 81-703.

77-3-208. Stone, gravel, and sand permits for public use. (1) The board may in its discretion issue permits upon such terms and conditions it determines to the department of highways, the board of county commissioners of any county of the state, or to the governing body of a city or town and of any other political subdivision of the state granting them the right to take, remove, and use stone, gravel, or sand from any state lands that have not been sold under certificate of purchase or otherwise for the construction, maintenance, and improvement of public roads, highways, bridges, streets, or alleys.

(2) The rights of lessees to the lands on which such stone, gravel, or sand may be located shall be properly safeguarded under the terms of the permits.

History: En. Sec. 55, Ch. 60, L. 1927; re-en. Sec. 1805.55, R.C.M. 1935; amd. Sec. 51, Ch. 428, L. 1973; R.C.M. 1947, 81-704.

Part 3

Coal

77-3-301. Coal leases authorized. The board may lease in such manner as it considers in the best interests of the state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal therein, upon the terms and conditions herein stated and subject to such rules as the board prescribes.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-302. Lands subject to coal leasing. The authority to lease extends to state lands no matter how acquired and extends to state lands which have been sold but in which the coal rights are reserved by the state, whether the lands are under certificate of purchase or patents have been issued.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-303. Rules relating to coal leasing. The board shall have the power and authority to prescribe such additional rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state land for coal mining purposes.

History: En. Sec. 44, Ch. 60, L. 1927; re-en. Sec. 1805.44, R.C.M. 1935; R.C.M. 1947, 81-507.

77-3-304. Protection of rights of purchasers or prior lessees. Whenever the leased lands are under certificate of purchase or patents have been issued and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-305. Limitations on leasing. The board shall not issue leases:

(1) to any corporation the majority stock of which is controlled by interests foreign to the United States, except for those interests within countries whose borders are contiguous to the United States; or

(2) if after a determination of the amount, location, and quality of the coal on the lands for lease, the extraction of the coal from such lands by strip-mining methods would adversely affect the methods of recovery of deep minable coal from such operations on such lands in the future.

History: **En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part).**

77-3-306. Conditions on manner of mining. (1) Every coal lease shall be conditioned upon compliance with Title 82, chapter 4, parts 1 and 2.

(2) These coal leases are subject to the condition that the coal must be mined, handled, and marketed in a manner that will prevent as far as possible all waste of coal and are also subject to the condition that the mining operations shall be carried on in a systematic and orderly manner that will not make subsequent mining operations more difficult or expensive. A violation of any of these conditions is grounds for the forfeiture of the lease after a hearing before the board.

History: **En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).**

77-3-307. Improvements of former lessee. (1) When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at the former operations, disposition shall be made of the improvements satisfactory to the board before a new lease is issued. If the owner of the improvements desires to sell the same to the new lessee, then the new lessee shall pay him the reasonable value thereof as far as they are suitable for the new mining operations. If they fail to agree on the value of such improvements, then such value shall be ascertained and fixed as provided in 77-6-306.

(2) Before a new lease is issued, the applicant shall show to the satisfaction of the board that he has paid the owner for the improvements as agreed on between them or as fixed by the aforesaid officers or officer or that he has tendered payment as so fixed or that the owner desires to remove his improvements.

History: **En. Sec. 43, Ch. 60, L. 1927; re-en. Sec. 1805.43, R.C.M. 1935; amd. Sec. 32, Ch. 428, L. 1973; R.C.M. 1947, 81-506.**

77-3-308 through 77-3-310 reserved.

77-3-311. Form of lease. The board shall prescribe the form of the lease.

History: **En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part).**

77-3-312. Leasing procedures. Prior to issuing a coal mining lease, the board shall evaluate the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves located on the land, giving opportunity for and consideration to public comments on such evaluation. Leases shall be awarded by a competitive bid system, including a bonus bid for the first year's rental, and no lease shall be awarded at less than fair market value.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-313. Bond requirements. The board shall also demand a surety company bond in such form and amount as it may determine, conditioned for the payment of all royalties due the state and for the carrying on of the mining operations according to the terms of the lease; but a lessee may, in lieu of furnishing a surety company bond, increase the cash deposit hereinbefore provided for to such an amount as will in the judgment of the board make the furnishing of a bond unnecessary.

History: En. Sec. 42, Ch. 60, L. 1927; re-en. Sec. 1805.42, R.C.M. 1935; R.C.M. 1947, 81-505.

77-3-314. Duration of lease. (1) Coal mining leases shall be issued for a primary term of 10 years and so long thereafter as coal is produced from such lands in commercial quantities.

(2) A lease not producing coal in commercial quantities at the end of the primary term shall be terminated, unless the leased lands are described in a strip mine permit issued under 82-4-221 or in a mine site location permit under 82-4-122 prior to the end of the primary term, and the lease shall not be terminated so long as said lands are covered and described under valid permit.

(3) For the purpose of this part, "commercial quantities" means that quantity of coal which can be sold at profit in the commercial market.

History: En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part).

77-3-315. Termination of lease because of sale to foreign interests. Any corporation, individual, or person who contracts the sale of coal from such leased lands to any individual, corporation, or person foreign to the United States, except those countries contiguous to the United States, shall have the lease terminated.

History: En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part).

77-3-316. Rental and royalty terms. (1) The compensation of the state under all coal mining leases shall be upon a rental and royalty basis and shall be fixed and determined by the board.

(2) The rental and royalty terms of each lease shall be subject to readjustment to reflect fair market value at the end of its primary term of 10 years and at the end of each 5-year period thereafter if the lease is producing coal in commercial quantities.

(3) The rental shall be on a per acre basis but in no case shall it be less than $2 per acre.

(4) The amount of such royalty shall be based upon the kind, grade, and character of the coal in each particular mine; upon the size, shape, and nature of the coal vein, strata, or body; and upon the shipping and marketing

facilities for the product. Consideration shall also be given to every other known factor affecting the value of each particular coal mining lease; but in no case shall the royalty for the coal mined be less than 10% of the f.o.b. mine price of a ton prepared for shipment.

History: (1), (3), (4)En. Sec. 40, Ch. 60, L. 1927; re-en. Sec. 1805.40, R.C.M. 1935; amd. Sec. 3, Ch. 358, L. 1975; Sec. 81-503, R.C.M. 1947; (2)En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; Sec. 81-502, R.C.M. 1947; R.C.M. 1947, 81-502(part), 81-503.

77-3-317. Report and payment of royalty. (1) On or before the last day of each month every holder of a producing coal mining lease shall make a report to the department on a form the department prescribes showing:

(a) the number of tons mined during the preceding calendar month;
(b) the price obtained therefor at the mine;
(c) the total amount of all sales; and
(d) any additional information required by the department.

(2) The report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

History: En. Sec. 45, Ch. 60, L. 1927; re-en. Sec. 1805.45, R.C.M. 1935; amd. Sec. 33, Ch. 428, L. 1973; R.C.M. 1947, 81-508.

77-3-318. Disposition of royalties and other receipts. All fees, rentals, royalties, and bonuses collected under state coal leases shall be paid to the department and credited as follows:

(1) All fees shall be credited to the state general fund.

(2) All rentals and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties shall be credited to the permanent fund arising from the grants to which the lands under lease belong.

History: En. Sec. 47, Ch. 60, L. 1927; re-en. Sec. 1805.47, R.C.M. 1935; amd. Sec. 34, Ch. 428, L. 1973; amd. Sec. 5, Ch. 358, L. 1975; R.C.M. 1947, 81-510.

77-3-319 and 77-3-320 reserved.

77-3-321. Coal mining permits for private use and for schools. (1) The board may in its discretion grant to any resident of this state a permit for a term of not more than 1 year to mine coal for the use of himself and his family from any coal deposit belonging to the state and not under lease upon payment to the state of the flat sum of $5 as a royalty for any amount of coal mined by him not exceeding 30 tons of 2,000 pounds.

(2) The board may also grant a similar 1-year permit to the board of trustees of any school district in this state, provided that if such school district requires more than 30 tons of coal per annum, then any additional amount required shall be paid for in advance at the rate of 12 ½ cents per ton.

(3) Applications for such permits shall be accompanied by an affidavit to the effect that the coal is not wanted for sale or disposal to other parties but that it is wanted for the use of the applicant and his family or for the use of the school district, as the case may be.

(4) The granting of such permits shall not prevent the board from issuing the usual coal mining leases on the land from which the coal under such permit is to be taken. In cases of this kind the permittee shall remove the quantity of coal to which he is entitled as expeditiously as possible and his rights under the permit shall then automatically cease upon the issue of the lease.

History: En. Sec. 46, Ch. 60, L. 1927; re-en. Sec. 1805.46, R.C.M. 1935; R.C.M. 1947, 81-509.

Part 4

Oil and Gas

77-3-401. Oil and gas leases authorized. (1) The board is hereby authorized and empowered to lease in such manner as it may determine, not inconsistent with The Enabling Act and the constitution, any state lands to which the title has vested in the state and in which the oil and gas rights are not reserved by the United States, for prospecting and exploring for oil and gas, mining, drilling, developing, and removing the same upon the terms and conditions herein prescribed to any person, association, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the state.

(2) This power and authority to lease state lands for such purposes shall extend to and include all lands owned by the state under navigable lakes and streams and shall also extend to and include all those state lands which have been sold but in which the oil and gas rights have been reserved by the state; but in such cases and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the oil and gas leases to protect the rights of the purchaser or lessee.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

77-3-402. Rules. (1) The board shall have the power and authority to prescribe such rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for oil and gas exploration and development. The board shall formulate rules not inconsistent with law governing the leasing of state lands for oil and gas exploration and development which shall be compiled and printed periodically.

(2) Copies of the rules and notices of changes therein shall be made available to any person desiring a copy thereof at a reasonable cost to be fixed by a rule of the board.

History: En. Sec. 7, Ch. 108, L. 1927; re-en. Sec. 1882.7, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1961; R.C.M. 1947, 81-1707.

77-3-403. Hearings on questions related to leases. The board is hereby granted full power and authority to order and hold hearings on any matter or question involving oil and gas leases under such rules as it may adopt.

History: En. Sec. 10, Ch. 108, L. 1927; re-en. Sec. 1882.10, R.C.M. 1935; R.C.M. 1947, 81-1710(part).

77-3-404. Limitation on area under single lease. An oil or gas lease issued on state lands may not embrace more than 640 acres, except that any section surveyed by the United States which contains more than 640 acres may be included under one lease.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-405. Leased lands to be generally compact and contiguous. (1) The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit.

(2) No lease may embrace noncontiguous subdivisions of lands unless the subdivisions are within an area comprising not more than 1 square mile.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(3).

77-3-406. Number of leases which one person may hold. Any person, association, corporation, or municipality qualified to hold an oil or gas lease on state lands may receive from the board or take through assignment or succession, will, judgment, decree, or otherwise through the operation of law more than one oil and gas lease to state lands, subject to such regulations and limitations as the board prescribes.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-407. New leases on lands leased prior to February 28, 1953. (1) In the case of all leases issued under the provisions in force prior to February 28, 1953, where oil or gas is being produced, the board shall at the expiration thereof or termination for any cause advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction on the terms then existing for such leasing. Any person, association, firm, or corporation who held such lease at the expiration thereof shall have the privilege of re-leasing the same at such highest responsible bid offered therefor upon such terms and conditions as may be prescribed by the board or the legislature.

(2) In the case of all leases issued under the provisions in force prior to February 28, 1953, where oil or gas is not being produced, the board may at the expiration thereof or termination for any cause advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction if in the judgment of the board such advertising and public auction will result in leasing of the land on terms advantageous to the state.

History: En. Sec. 15, Ch. 108, L. 1927; amd. Sec. 3, Ch. 171, L. 1933; re-en. Sec. 1882.15, R.C.M. 1935; amd. Sec. 1, Ch. 104, L. 1965; R.C.M. 1947, 81-1715.

77-3-408. Certain state officers not to be interested in leases. It is unlawful for any officer or employee of any agency of the executive branch of state government who is required to inspect or examine oil or gas wells or otherwise to gather field information in regard to prospecting for oil and gas or the production thereof to lease or to become interested in any manner in any oil or gas lease on state lands.

History: En. Sec. 20, Ch. 108, L. 1927; amd. Sec. 4, Ch. 171, L. 1933; re-en. Sec. 1882.20, R.C.M. 1935; amd. Sec. 93, Ch. 428, L. 1973; R.C.M. 1947, 81-1720.

77-3-409. Misconduct of officers in relation to oil and gas leases. (1) Any officer, employee, or representative of the state who directly or indirectly accepts any money or any other valuable thing, except his regular and lawful compensation, for performing or not performing an official act under the provisions of this part or for modifying the performance thereof shall be guilty of a felony.

(2) Any officer, employee, or representative of the state who knowingly and willfully makes any false classification or appraisal of any state land or interest of the state therein or of any oil and gas deposits in which the state is interested or who knowingly and willfully makes any false report of any such classification or appraisal shall be guilty of a felony.

History: En. Sec. 21, Ch. 108, L. 1927; re-en. Sec. 1882.21, R.C.M. 1935; R.C.M. 1947, 81-1721.

77-3-410. False statements relating to oil and gas leases. Any person who shall knowingly make and file in any department, bureau, or office of the state any application, statement, or report in writing required by regulation promulgated pursuant to the provisions of this part containing any false statement of a material fact shall be guilty of a felony.

History: En. Sec. 22, Ch. 108, L. 1927; re-en. Sec. 1882.22. R.C.M. 1935; R.C.M. 1947, 81-1722.

77-3-411 through 77-3-420 reserved.

77-3-421. Duration of lease. (1) All state oil and gas leases shall be granted for a primary term or period of 10 years and as long thereafter as oil or gas in paying quantities is produced, on condition that all drilling, rental, and other obligations are fully kept and performed by the lessee.

(2) Oil or gas produced from any part of a unit in which state lands are included by virtue of a pooling agreement are considered to be produced from the state lands therein within the meaning of this part.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-422. Lease extension clause. If oil or gas is not being produced from the leased premises at the expiration of the primary term of the lease but the owner of the lease is then engaged in drilling on the premises for oil or gas, then the lease continues in force so long as such drilling operations are being diligently prosecuted. If oil or gas is recovered from any such well drilled or being drilled at or after the expiration of the primary term of the lease, the lease continues in force so long as oil or gas in paying quantities is produced from the leased premises.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-423. Annual rental. (1) The annual money rentals to be paid to the state for oil and gas leases issued on and after July 1, 1975, shall be set by the board but may not be less than $1.50 for each acre of land leased.

(2) In addition to the sum of $1.50 per acre, the rental for the first year of the lease shall also include any sum in excess of $1.50 per acre offered and accepted for the first year's rental.

(3) This annual rental shall in no case be less than $100 a year.

(4) The first year's rental shall be paid before the issuance of the lease. The rentals for each subsequent year of the lease shall be due and payable before the beginning of such subsequent year, and upon failure to make such payment the lease terminates.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(1), (2).

77-3-424. Power to terminate lease in absence of commencement of drilling or payment of delay drilling penalty. (1) In every oil and gas lease granted after March 3, 1955, under this part there shall be reserved to the board full power to declare termination of the lease at the end of the fifth year or any subsequent year of the primary term of the lease upon failure of the lessee to either:

(a) commence the drilling of a well for oil and gas upon the leased premises; or

(b) pay a delay drilling penalty as follows:

(i) for the sixth year of the lease $1.25 per acre per year; and

(ii) for the remainder of the primary term of the lease an amount per acre per year as the board may in its discretion determine.

(2) Notice of that determination shall be given to the lessee, and if the lessee applies for a hearing thereon within 10 days after receipt of the notice, the determination shall become final only after such hearing has been held.

(3) This annual delay drilling penalty shall be paid each year in advance.

(4) If a well for oil and gas is commenced, the drilling of the well shall be prosecuted with due diligence and dispatch to such depth as is necessary to make a reasonable test for oil or gas.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965; amd. Sec. 86, Ch. 428, L. 1973; R.C.M. 1947, 81-1702.2(part); amd. Sec. 9, Ch. 15, L. 1979.

77-3-425. Dry hole clause. If the first well drilled is a dry hole and if a second well is not commenced on the land covered by the lease before the next anniversary of the lease following the completion of the well, the lease may be terminated by the board unless the lessee, on or before such anniversary, resumes the payments of penalties in the amounts provided in 77-3-424. Upon the resumption of the payment of such delay drilling penalties and their continued payment, the lease continues in force during the primary term as though there had been no interruption in the delay drilling penalty payments.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965; amd. Sec. 86, Ch. 428, L. 1973; R.C.M. 1947, 81-1702.2(part).

77-3-426. Lessee to prevent waste. Oil and gas leases issued under the provisions of this part shall all be subject to the conditions that the lessee in conducting his explorations and mining or drilling operations shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled by him to the oil or gas sands or oil or gas bearing strata to the destruction or injury of the oil or gas deposits. Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the board.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

77-3-427. Provision for offset wells. Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to drill offset wells wherever and whenever necessary to prevent waste and damage to the property of the state.

History: En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; R.C.M. 1947, 81-1719(part).

77-3-428. Additional development following completion of productive well. (1) The lessee shall be required, upon completing a commercially productive oil or gas well upon the leased premises, to proceed with reasonable diligence to drill such additional wells to the depth of the formation found commercially productive or to such depth as may be necessary to economically test, develop, and operate the deposits discovered.

(2) No lessee shall, however, be required to drill to completion more than one well under any one lease during any one calendar year or a total number of wells under any one lease in excess of the total number of 40-acre subdivisions of land held under such lease. As to lands found valuable for gas production only, the drilling obligation of the lessee shall be confined to a total number of wells equal to the total number of tracts comprising 160 acres of land included in the lease, except as the drilling of offset oil or gas wells necessary to protect the leased premises and deposits from loss or depletion due to wells drilled on contiguous lands shall require greater diligence in drilling and a greater number of wells to be drilled.

(3) The performance of said well drilling operations may be suspended only by and with the consent of the board during the time oil or gas previously discovered cannot be marketed at a profit or for other good cause shown.

History: En. Sec. 11, Ch. 108, L. 1927; re-en. Sec. 1882.11, R.C.M. 1935; R.C.M. 1947, 81-1711.

77-3-429. Operating agreements. Owners of state oil and gas leases may enter into agreements with other persons, associations, firms, and corporations for drilling and other operations on the state lands under their leases. No such operating agreements are in any way binding upon the state until filed with the board and approved by it. No such drilling or operating agreement in any way affects the obligations of each individual leaseholder to the state.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(3).

77-3-430. Pooling agreements and unit operations. Nothing contained in this or in prior related laws prevents the board from entering into agreements for the pooling of acreage with others for unit operations for the production of oil or gas or both and the apportionment of oil or gas royalties or both on an acreage or other equitable basis and from modifying leases with respect to delay rentals, delay drilling penalties, and royalties in accordance with such pooling agreements and such unit plans of operation. However, such agreements may not change the percentage of royalties to be paid to the state from the percentages as fixed in its leases. The board may modify existing pooling and unit agreements so as to commit the state lands included therein for as long as the unitized substance or substances for which the state lands are committed is produced from any lands in the unit.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(4).

77-3-431. Report of lessees. (1) On or before the last day of each month every holder of a producing oil or gas lease shall make a report to the department for the preceding calendar month on a form the department prescribes. The report shall show the amount of oil or gas produced and saved during the preceding month, the price obtained, the total amount of all sales, and any additional information as may be required, and it shall be signed by the lessee or some responsible person having knowledge thereof.

(2) Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to make such report of operation, production, and sales in the manner, at the time, and to such representative of the state as may be required by the board.

History: (1)En. Sec. 5, Ch. 108, L. 1927; re-en. Sec. 1882.5, R.C.M. 1935; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963; amd. Sec. 87, Ch. 428, L. 1973; Sec. 81-1705, R.C.M. 1947; (2)En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; Sec. 81-1719, R.C.M. 1947; R.C.M. 1947, 81-1705(part), 81-1719(part).

77-3-432. Royalty. In every oil and gas lease granted by the state under this part and acts amendatory thereto, there shall be reserved to the state as consideration therefor, in addition to the rentals as hereinbefore provided, a royalty in all oil and gas produced and saved from all lands covered thereby and not used for light, fuel, and operation purposes on the leased premises, which shall be equivalent to the full market value, as ascertained by the board at the date of such lease, of the estate or interest of the state in the lands and oil and gas deposits disposed of under such lease. Such royalty reservation shall be set by the board but may not be less than 12 ½% on gas and not less than 12 ½% on that portion of the average production of oil or casinghead gasoline for each producing well not exceeding 3,000 barrels for the calendar month.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part).

77-3-433. Shut-in gas royalty. The royalty on gas, including casinghead gas and all gaseous substances, while the same is not sold or used off the premises, shall be at the rate of $400 per well each year or the amount of the annual rental provided in said lease in lieu of such per well rate, whichever is the greater, payable on or before the annual anniversary date of the lease. As long as such leased lands contain a well capable of such production and such payment is made, the lease shall be considered as a producing lease under the lease terms.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379; L. 1975; R.C.M. 1947, 81-1704(part).

77-3-434. Manner of making royalty payment. Such lease shall provide for the rendering of payment of such royalty on all oil and gas produced and saved and sold or used off the premises in the following manner and upon the following terms:

(1) the lessee shall pay to the state in cash, for all oil and gas royalty reserved, the posted field price existing on the day such oil or gas is run into any pipeline or storage tank to the credit of the lessee, plus any bonus actually paid or agreed to be paid to the lessee for such oil or gas; or

(2) at the option of the state exercised in writing by the board not oftener than every 30 days, the lessee shall deliver the state's royalty oil or gas free of cost or deductions into the pipeline to which the wells of the lessee may be connected or into any storage designated by the state and connected with such wells.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part).

77-3-435. Payments due to state. (1) The report under 77-3-431 shall be accompanied by payment of the amount due the state as royalty for the month covered by the report unless the state's royalty is being or has been paid direct by the purchaser thereof. However, where the amount of royalty due from any lease is determined by the board to be so small as to make it uneconomical to collect monthly, the board may authorize royalty payments to be made semiannually.

(2) Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to make payments due the state in the manner, at the time, and to such representative of the state as may be required by the board.

History: (1)En. Sec. 5, Ch. 108, L. 1927; re-en. Sec. 1882.5, R.C.M. 1935; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963; amd. Sec. 87, Ch. 428, L. 1973; Sec. 81-1705, R.C.M.; (2)En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; Sec. 81-1719, R.C.M. 1947; R.C.M. 1947, 81-1705(part), 81-1719(part).

77-3-436. Disposition of royalties and other moneys. All fees, rentals, penalties, royalties, and bonuses collected for or under state oil and gas leases shall be paid to the department and credited as follows:

(1) All fees and penalties shall be credited to the state general fund.

(2) All rentals shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs and become and forever remain an inseparable and inviolable part thereof. However, all royalties and bonuses collected from the lands forming part of the capitol building grant shall be available as income, the same as all other receipts from such lands.

(4) All moneys received as rentals, royalties, and bonuses for or under leases on state lands and not held in trust for the public schools of the state or for any state institution shall be credited one-half to the state general fund and one-half to the state permanent revenue fund.

History: En. Sec. 12, Ch. 108, L. 1927; re-en. Sec. 1882.12, R.C.M. 1935; amd. Sec. 44, Ch. 100, L. 1973; amd. Sec. 89, Ch. 428, L. 1973; R.C.M. 1947, 81-1712.

77-3-437. Amendment of existing leases. The owner or owners of any existing state oil and gas lease shall have the right to exchange it for an amended lease containing the same provisions as to the term of said lease as are then provided by law for state oil and gas leases upon filing a written application therefor and upon payment of a sum which is the full market value of the exchange, as determined by the board. The amended lease shall be subject to all other provisions, including rents and royalties, contained in the original lease and shall bear the same commencement date as the original lease.

History: En. Sec. 8, Ch. 108, L. 1927; re-en. Sec. 1882.8, R.C.M. 1935; amd. Sec. 3, Ch. 122, L. 1953; R.C.M. 1947, 81-1708.

77-3-438. Assignments of leases. (1) The assignment of any oil and gas lease issued under this part, either in whole or as to subdivisions of land embracing not less than 40 acres covered thereby, made to an assignee qualified as provided herein is permitted. Such assignment is not, however, binding upon the state until filed with the department and accompanied by the required fees, together with such proof of qualifications required by the board, and approved by the board or its lawful representative. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interest of the state in the property assigned will not in the judgment of the board be prejudiced thereby, and the decision of the board in all cases is subject to appeal upon proper court proceedings.

(2) All other assignments of oil and gas leases issued under this part or interests therein are subject to approval by the board and are binding upon the state in the discretion of the board.

History: En. Sec. 16, Ch. 108, L. 1927; re-en. Sec. 1882.16, R.C.M. 1935; amd. Sec. 90, Ch. 428, L. 1973; R.C.M. 1947, 81-1716.

77-3-439. Surrender of leases. The lessee under any oil and gas lease granted by the state may at the termination of any rental year, by giving to the department 30 days' previous notice in writing, surrender and relinquish the lease to the state in whole or as to any legal subdivision of the lands covered thereby and be discharged from any obligation not yet accrued as to lands so surrendered and relinquished without prejudice to the continuance of the lease as to lands not surrendered or relinquished.

History: En. Sec. 18, Ch. 108, L. 1927; re-en. Sec. 1882.18, R.C.M. 1935; amd. Sec. 92, Ch. 428, L. 1973; R.C.M. 1947, 81-1718.

77-3-440. Forfeiture and cancellation of leases. (1) All oil and gas leases granted by the state pursuant to the terms of this part shall provide for forfeiture and cancellation thereof upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the state and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default.

(2) Any lessee, upon application therefor, shall be granted a hearing on any notice or demand of the board before any lease is declared forfeited or canceled by the board.

History: En. Sec. 10, Ch. 108, L. 1927; re-en. Sec. 1882.10, R.C.M. 1935; R.C.M. 1947, 81-1710(part).

77-3-441. Restriction on new lease following termination of old lease. In all cases where an oil and gas lease issued after March 3, 1955, is surrendered for cancellation before its expiration, relinquished to the state, or canceled through proceedings on the part of the state, no new lease on the lands under such lease may be issued within 30 days from the date of cancellation or relinquishing. This restriction does not apply, however, in cases of bona fide assignment.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(4).

77-3-442. Disposition of property of lessee upon termination of lease. (1) Upon the termination for any cause of any lease issued under this part, the former lessee has 6 months after the date of the termination to remove all machinery, fixtures, improvements, buildings, and equipment belonging to him on the premises, except for casing in the wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells. As to such casing, equipment, and apparatus, any succeeding lessee or, in the event there is no succeeding lessee, the state wishing to have such property left upon the premises shall pay the reasonable value thereof to the former lessee.

(2) If the succeeding lessee or the board is unable to agree with the former lessee upon the reasonable cash value of such casing, equipment, and apparatus, the succeeding lessee or the state, as the case may be, shall pay in cash to the former lessee a sum fixed as a reasonable price by a board of three appraisers, one of whom shall be chosen by the successful bidder, one by the former lessee, and the third by the two so chosen. Its appraisal shall be reported to the respective parties in writing and is final and conclusive.

(3) The former lessee may remain in possession and manage the land and property formerly covered by his lease until the value of the casing, equipment, and apparatus which the succeeding lessee or the state desires to have left upon the premises is fixed in the manner provided in this section and has been paid to him in cash. During the time the former lessee remains in such possession, he may retain the same share of the products of the premises as inured to him during the term of his lease. Should the state or other bidder not desire any of the lessee's property as provided in this section, the lessee shall properly plug all wells and remove all of his property from the lands.

History: En. Sec. 17, Ch. 108, L. 1927; re-en. Sec. 1882.17, R.C.M. 1935; amd. Sec. 91, Ch. 428, L. 1973; R.C.M. 1947, 81-1717.

77-3-443. Reservation in lease for disposition of surface. In every oil and gas lease granted pursuant to the terms hereof there shall be reserved unto the state the right to sell, lease, or otherwise dispose of the surface of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under such oil and gas lease.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

Part 5

Underground Storage of Natural Gas

77-3-501. Lease for underground storage of natural gas authorized. (1) The board is hereby authorized and empowered to lease in such manner and upon such terms as it may determine, not inconsistent with The Enabling Act and the constitution, state lands to which the title has vested in the state, subject to existing rights, for use for the underground storage of natural gas upon the terms and conditions herein prescribed, to any natural gas public utility authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within, or through this state for ultimate public use.

(2) State lands which may be leased shall include lands in which the deposit of native gas shall have been depleted, provided the lessee pays to the state the amount specified by the board for the native gas then remaining in the lands to be leased.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(1).

77-3-502. Rules. The board shall have the power and authority to prescribe such rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for the underground storage of natural gas and the sale of the gas remaining in state lands in a gas field wherein native gas deposits have been depleted.

History: En. Sec. 3, Ch. 213, L. 1955; R.C.M. 1947, 81-1727.

77-3-503. Hearings on questions related to leases. The board may order and hold hearings on any matter or question involving leases issued under 77-3-501 under such rules as it adopts.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-504. Lessee's right to hearing. Any lessee, upon application, is entitled to a hearing on any notice or demand of the department before any lease is granted, forfeited, or canceled by the board.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-505. Bond of lessees. A lessee under 77-3-501 shall furnish bond to the state in a form prescribed by the board and in an amount adequate to indemnify the state against loss, damage, or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease. No bond in excess of $20,000 is required under any one lease.

History: En. Sec. 4, Ch. 213, L. 1955; amd. Sec. 95, Ch. 428, L. 1973; R.C.M. 1947, 81-1728.

77-3-506. Disposition of leased land. In every lease granted pursuant to the terms hereof there shall be reserved unto the state the right to sell, lease, or otherwise dispose of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under a lease provided for by this part.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(2).

77-3-507. Lessee to prevent waste. (1) Leases issued under the provisions of this part shall all be subject to the conditions that the lessee in conducting the underground storage of natural gas shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled to store natural gas to the oil or gas sands or oil or gas bearing strata to the destruction or injury of oil or gas deposits.

(2) Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the board.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(3).

77-3-508. Duration of lease. All leases issued under 77-3-501 may be granted for a period not exceeding 20 years, and the lessee has a preferential right to renew the lease for an additional period not exceeding 20 years, subject to any terms and conditions the board imposes.

History: En. Sec. 2, Ch. 213, L. 1955; amd. Sec. 94, Ch. 428, L. 1973; R.C.M. 1947, 81-1726.

77-3-509. Disposition of funds. All rentals collected for or under leases issued under 77-3-501 shall be paid to the department and credited in the same manner as rentals from oil and gas leases.

History: En. Sec. 6, Ch. 213, L. 1955; amd. Sec. 97, Ch. 428, L. 1973; R.C.M. 1947, 81-1730.

77-3-510. Cancellation and forfeiture of lease. All leases granted under 77-3-501 shall provide for their forfeiture and cancellation upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the department and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-511. Termination and surrender of lease. The lessee may at the termination of any rental year, by giving to the department 30 days' previous notice in writing, surrender and relinquish such lease to the state and be thereupon discharged from any obligation not yet accrued.

History: En. Sec. 7, Ch. 213, L. 1955; amd. Sec. 98, Ch. 428, L. 1973; R.C.M. 1947, 81-1731(1).

77-3-512. Disposition of lessee's property upon termination of lease. Upon the termination for any cause of any lease issued under 77-3-501, the lessee has 6 months after the date of the termination within which to remove all machinery, fixtures, improvements, buildings, and equipment belonging to it upon the premises.

History: En. Sec. 7, Ch. 213, L. 1955; amd. Sec. 98, Ch. 428, L. 1973; R.C.M. 1947, 81-1731(2).

CHAPTER 4

GEOTHERMAL AND HYDROELECTRIC RESOURCES

Part 1 — Geothermal Resources

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Part 1

Geothermal Resources

77-4-101. Geothermal leases authorized. (1) The board may lease state-owned lands, including the beds of navigable streams and the beds of navigable bodies of water, to persons, associations, or corporations for prospecting, exploration, well construction, and the production of geothermal resources.

(2) The board may exercise business discretion in entering into leases under this part.

History: (1)En. 21-2601 by Sec. 1, Ch. 111, L. 1974; Sec. 81-2601, R.C.M. 1947; (2)En. 81-2604 by Sec. 4, Ch. 111, L. 1974; Sec. 81-2604, R.C.M. 1947; R.C.M. 1947, 81-2601, 81-2604(part).

77-4-102. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Geothermal resources" means the natural heat energy of the earth, including the energy, in whatever form, which may be found in any position and at any depth below the surface of the earth, either present in, resulting from, created by, or which may be extracted from such natural heat and all minerals in solution or other products obtained from the material medium of any geothermal resource.

(2) "Geothermal development" means any of the operations or facilities necessary for the production of geothermal resources.

History: **En. 81-2602 by Sec. 2, Ch. 111, L. 1974; R.C.M. 1947, 81-2602(part).**

77-4-103. Rules. The board shall adopt rules governing the issuance of geothermal resource leases and the conduct of all geothermal operations. The board may also require the applicant for a geothermal lease to pay an application fee.

History: **En. 81-2603 by Sec. 3, Ch. 111, L. 1974; R.C.M. 1947, 81-2603.**

77-4-104. Nature of geothermal resources. Goethermal resources are sui generis, being neither a mineral resource nor a water resource, but they are closely related to and possibly affecting and affected by water resources in many instances.

History: **En. 81-2602 by Sec. 2, Ch. 111, L. 1974; R.C.M. 1947, 81-2602(part).**

77-4-105. State retention of geothermal resources. No right to seek, obtain, or use geothermal resources has passed or shall pass with any existing or future lease of state or school lands.

History: **En. 81-2602 by Sec. 2, Ch. 111, L. 1974; R.C.M. 1947, 81-2602(part).**

77-4-106. Bonding requirements. The board may, at any time prior to the execution and delivery of a geothermal lease or at any time during the life of the lease, require a lessee to file with the department a bond to protect the rights of the state. The bond shall be in form and amount prescribed by the board. The board may at any time require new or additional bonds if the interests of the state will not adequately be protected by the bond previously filed.

History: **En. 81-2606 by Sec. 6, Ch. 111, L. 1974; R.C.M. 1947, 81-2606.**

77-4-107. Compensation to surface lessee. The lessee of any geothermal lease shall compensate the surface lessee for any damage to the surface or leasehold interest caused as a result of the geothermal lease. The board may require the geothermal lessee to post a bond in an amount to be set by the board to insure the payment of damages to any surface lessee. If the surface lessee and the geothermal lessee disagree as to the reasonable amount of surface damage, damage shall be ascertained in the same manner as prescribed in 77-4-129.

History: **En. 81-2607 by Sec. 7, Ch. 111, L. 1974; R.C.M. 1947, 81-2607.**

77-4-108. Water rights in connection with geothermal development. If any geothermal development located on state land requires the utilization of water, the lessee may, at any time prior to 1 year before the expiration of his lease, make application to the board for permission to secure a water right to the land under his lease. Such application shall be in writing, show the permanency of the water supply, and the estimated cost of utilizing such water resources. If the proposed plan meets with the approval of the board, permission shall be granted to the lessee to secure the desired water right for the land. Such right shall be secured in accordance with Title 85, chapter 2, and shall be filed in the name of the state. Existing water rights purchased by the geothermal lessee shall be the property of the lessee.

History: En. 81-2611 by Sec. 11, Ch. 111, L. 1974; R.C.M. 1947, 81-2611.

77-4-109. Conflicting leases. Where there are conflicting leases, including but not limited to geothermal, coal, mineral, and oil and gas leases, embracing the same land, the person who first was issued a lease shall be entitled to priority of rights; provided, however, that the exercise of this priority shall not interfere with actual production from the lease as determined by the board.

History: En. 81-2612 by Sec. 12, Ch. 111, L. 1974; R.C.M. 1947, 81-2612.

77-4-110 through 77-4-120 reserved.

77-4-121. Provisions of the lease. (1) A lease issued by the board gives the lessee, so long as he complies with the terms and conditions of the lease, the exclusive right of possession of the lands or interests leased, subject to conditions contained in the lease.

(2) In every geothermal resource lease granted there is reserved to this state the right to sell, lease, or otherwise dispose of the surface of the lands covered thereby subject to the rights and privileges granted the lessee under the terms of the lease.

(3) Every lease shall specify the rental and royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a specified time, remove property placed on the leased lands upon the termination of the lease by forfeiture or by lapse of time.

(4) Furthermore, the lease may contain other provisions the board and the lessee agree upon, provided that the additional terms are not inconsistent with this part.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(part).

77-4-122. Duration of lease. The term of each lease shall be for a primary term of 10 years and for so long thereafter as geothermal resources in paying quantities are produced, provided that all conditions and terms of the lease are fully performed by the lessee.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(part).

77-4-123. Extension of lease. If geothermal resources are not being produced from the leased premises at the expiration of the primary term of the lease but the owner of the lease is then engaged in drilling on the premises for geothermal resources, then the lease term shall be extended for so long as the drilling operations are diligently continued. If geothermal resources are recovered from any well drilled after the expiration of the primary term, the lease shall continue in force so long as geothermal resources in paying quantities are produced from the leased premises.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(part).

77-4-124. Operating agreements. Lessees may enter into agreements with other persons, associations, firms, and corporations for drilling and other operations on state lands, but no such operating agreements shall be binding upon the state until filed with the department and approved by the board. No drilling or operating agreement may affect the obligations of each individual leaseholder to the state.

History: **En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(4).**

77-4-125. Pooling agreements and unit operations. (1) Nothing contained in this part or other related laws shall prevent the board from entering into agreements for the pooling of acreage for unit operations for the production of geothermal resources and apportionment of geothermal royalties on an acreage or other equitable basis or from modifying the royalty provisions of existing leases and all subsequent leases in accordance with pooling agreements and unit plans of operation. No agreement may be entered into which changes the percentage of royalties to be paid to the state from the percentages fixed in its leases.

(2) Geothermal resources produced from any part of a unit in which state lands are included by virtue of a pooling agreement shall be considered to be produced from the state lands therein.

History: **En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(5), (6).**

77-4-126. Royalties and rentals. Geothermal leases shall be issued at an annual rental of not less than $1 per acre, payable in advance and/or a royalty which shall not be less than 10% of the amount or value of steam or other forms of heat or energy derived from the production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee and not more than 5% of any by-product derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee.

History: **En. 81-2605 by Sec. 5, Ch. 111, L. 1974; R.C.M. 1947, 81-2605.**

77-4-127. Disposition of royalties and other receipts. (1) The department shall credit fees collected under geothermal leases to the general fund.

(2) All rentals, penalties, and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs.

History: **En. 81-2610 by Sec. 10, Ch. 111, L. 1974; R.C.M. 1947, 81-2610.**

77-4-128. Permission for and disposition of improvements. (1) A geothermal lessee of state lands has the right to place upon the leased lands a reasonable amount of improvements, provided that such improvements are directly related to the purpose of the lease.

(2) Whenever another person becomes the geothermal lessee, he shall pay the former lessee the reasonable value of such improvements at the time the new lessee takes possession thereof.

(3) In determining the value of these improvements, the original cost, the present condition, and the suitableness of the improvements for the uses ordinarily made of geothermal resources shall be considered.

(4) The former lessee may, however, remove or dispose of the moveable improvements from the land within 60 days from the expiration of his lease except for the well casing and other equipment necessary for the preservation of any geothermal well. If not removed within 60 days, improvements shall become the property of the state unless the board shall grant additional time for the removal thereof. Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under 77-4-129, that he has offered to pay the value of the improvements as so fixed and determined, or that the former lessee elects to remove the improvements.

History: **En. 81-2608 by Sec. 8, Ch. 111, L. 1974; R.C.M. 1947, 81-2608.**

77-4-129. Procedure to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell these improvements to the new lessee and they are unable to agree on the value thereof, the value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee, and the third by the two arbitrators so appointed. The reasonable compensation that the arbitrators may fix shall be paid in equal shares by the owner of the improvements and the new lessee. The value of the improvements so ascertained and fixed is binding on both parties.

(2) If either party is dissatisfied with the valuation so fixed, he may within 10 days appeal from their decision to the department which shall examine the improvements and make the final decision as to the value of the improvements. The department shall apportion the actual cost of the reexamination to the owner and the new lessee as justice may require. The value of the improvements shall be ascertained and fixed as provided in 77-4-128.

History: **En. 81-2609 by Sec. 9, Ch. 111, L. 1974; R.C.M. 1947, 81-2609.**

Part 2

Hydroelectric Resources

77-4-201. Lease or license of power sites. It shall be unlawful to sell or advertise for sale state lands constituting power sites or part of power sites capable of developing hydroelectric energy in commercial quantities; but the board is hereby granted power and authority to issue lease or license to any person, corporation, or municipality for the development of such power sites and the distribution, use, and disposition of the electric energy generated thereon, as herein more specifically provided.

History: **En. Sec. 2, Ch. 123, L. 1931; re-en. Sec. 1904.2, R.C.M. 1935; R.C.M. 1947, 81-1802.**

77-4-202. Power site defined. The words "power site" as used in this part shall mean not only the state-owned land on which the dam is constructed, but also each separate tract of such land which will become part of the reservoir and which in and of itself makes an essential contribution to the value of the power site as a whole of not less than 5% of the entire value of such power site.

History: **En. Sec. 1, Ch. 123, L. 1931; re-en. Sec. 1904.1, R.C.M. 1935; R.C.M. 1947, 81-1801.**

77-4-203. Restrictions and regulations. In issuing any lease or license under the provisions of this part, the board shall have the power and it shall be its duty to incorporate in the lease or license such reasonable restrictions and regulations as it finds necessary in order to protect the interest of the state and its people.

History: En. Sec. 6, Ch. 123, L. 1931; re-en. Sec. 1904.6, R.C.M. 1935; R.C.M. 1947, 81-1806.

77-4-204. Examination of power sites. Whenever an application in writing has been presented to the board for lease or license on a power site on state lands, the board shall make such preliminary examination as to the value of the power site, as to the plans of development submitted by the applicant, and of all other matters relating to the proposed development as it deems necessary for the proper disposition of the business.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-205. Notice of proposed lease or license. If these preliminary investigations and the offer made for lease or license are such that the board deems further proceedings on the application to be justified, it shall cause notice of the proposed lease or license to be published not less than once each week during not less than 6 weeks previous to the meeting at which further consideration will be given to the application in two newspapers of general circulation throughout the state, one of such newspapers to be published in the neighborhood of the location of the power site.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-206. Meeting of board on proposed lease or license. (1) At this meeting all other applications which may have been received for lease or license to such power sites shall be duly considered together with the application originally filed.

(2) The board shall have the right to reject any or all bids.

(3) If, however, the board finds that any of the bids submitted offers to pay adequate rental for such power site, shows to the satisfaction of the board that it is capable of carrying out the proposed development and of rendering efficient service to the customers that will be served from such power development, and intends in good faith without any unnecessary delay to proceed with the development, then the board shall accept such bid. If more than one such acceptable bid is received, then the lease or license shall be awarded to the person, corporation, or municipality whose offer, considered in its totality, is the most advantageous to the state.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-207. Preference to bid of municipality. In case one of the applicants is a municipality, its bid shall have preference provided that it is in all respects as advantageous to the state as the bid which has been submitted by any person or corporation.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-208. Rental for power sites. The rental to the state must be paid annually or semiannually and such rental shall not be less than the full market value of the estate or interest disposed of through the granting of the lease or license, such value to be carefully ascertained from all available sources.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-209. Duration of lease. The term of the lease shall not exceed 50 years.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-210. Joint development with the United States. (1) If the state land constituting such power site is part of a larger power site owned or controlled by the government of the United States, then the board may grant a joint lease or license with the United States for the development of the power site and the distribution, use, and disposition of the electric energy generated at such power site under the laws of the United States and regulations issued pursuant thereto.

(2) Such lease or license may be granted for a term not exceeding 50 years.

(3) The share or percentage of ownership of the state in such joint power site shall be in proportion to the total contribution that the lands of the state make to the value of the entire power site. Before the share of the state in such power site is advertised for lease or license, the percentage of the state's share in the entire power site must be calculated and agreed upon between the state and the United States.

(4) The fee or compensation from time to time to be paid to the state under such lease or license shall be calculated on the basis of the state's share of ownership in the entire power site as calculated and agreed to; provided, however, that it shall not be less than the full market value of the estate or interest disposed of in such lands through the granting of the lease or license to be carefully ascertained from all available sources.

(5) Before such lease or license is issued, notice thereof must be given in the same manner as herein required for the issuance of a separate lease or license by the state.

History: En. Sec. 4, Ch. 123, L. 1931; re-en. Sec. 1904.4, R.C.M. 1935; R.C.M. 1947, 81-1804.

77-4-211. Amortization of investment. (1) In all cases where the lease or license issued by the United States requires the amortization of the investment made in dams, machinery, equipment, and appurtenant works, such amortization requirement shall also apply to that portion of the investment representing the state's part or share in the power site so that the state will at all times retain its full share of ownership in the power site and in the dams, machinery, equipment, and appurtenant works.

(2) If the state lands constitute a separate power site wholly owned by the state and independently developed, the lease or license issued by the state may provide for the amortization of the capital invested in the dam, machinery, equipment, and appurtenant works, not including the distribution system, so that ultimately the state will become the owner of the power site including the dam, machinery, equipment, and appurtenant works, not including the distribution system.

History: En. Sec. 5, Ch. 123, L. 1931; re-en. Sec. 1904.5, R.C.M. 1935; R.C.M. 1947, 81-1805.

CHAPTER 5

TIMBER RESOURCES

Part 1 — State Forests

Section

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Part 1

State Forests

77-5-101. Classification of lands as state forests. All lands at present owned by the state and all that may hereafter be acquired by the state through escheat, exchange, purchase, grant, or devise which are principally valuable for the timber that is on them or for the growing of timber or for watershed protection are hereby classified and designated "state forests" and reserved for forest production and watershed protection.

History: En. Sec. 1, Ch. 179, L. 1925; re-en. Sec. 1830.1, R.C.M. 1935; amd. Sec. 1, Ch. 145, L. 1949; amd. Sec. 1, Ch. 167, L. 1951; amd. Sec. 97, Ch. 253, L. 1974; R.C.M. 1947, 81-1401.

77-5-102. Designation of state forests. The following state forest units are hereby established, primarily to secure through forestry management a continuous supply of timber and the performance of watershed covers:

(1) A state forest containing lands owned or hereafter acquired by the state, now comprising about 90,000 acres, situated in the watersheds of the Stillwater and Whitefish Rivers of Flathead and Lincoln Counties shall hereafter be known and designated as the "Stillwater State Forest".

(2) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 42,000 acres, situated in the Swan River watershed of Lake County shall hereafter be known and designated as the "Swan River State Forest".

(3) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 20,000 acres, situated in the Coal Creek watershed of the North Fork of the Flathead River shall hereafter be known and designated as the "Coal Creek State Forest".

(4) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 10,000 acres situated in the watersheds of Camp and Cameron Creeks of Ross Hole of Ravalli County shall hereafter be known and designated as the "Sula State Forest".

(5) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 14,628 acres, situated in the west half of township 25 north, range 26 west; and township 23 north, range 27 west; and west half of township 22 north, range 26 west; and township 21 north, range 26 west, except sections 4, 5, 6, 7, 8, and 18, in the Thompson River watershed of Sanders County shall hereafter be known and designated as the "Thompson River State Forest".

(6) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 18,076 acres, situated in townships 13, 14, and 15 north, range 14 west; and townships 13 and 16 north, range 15 west, Montana meridian, in the Clearwater River watershed of Missoula County shall hereafter be known and designated as the "Clearwater State Forest".

(7) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 8,245 acres, situated in township 14 north, ranges 7, 8, and 9 west; and township 13 north, ranges 8 and 9 west, Montana meridian, of the Blackfoot River watershed in Lewis and Clark County shall hereafter be known and designated as the "Lincoln State Forest".

History: **En. Sec. 2, Ch. 179, L. 1925; re-en. Sec. 1830.2, R.C.M. 1935; R.C.M. 1947, 81-1402.**

77-5-103. Role of department of natural resources and conservation. (1) The department of natural resources and conservation shall, under the direction and control of the board, do all the field work in the selection, location, examination, appraisement, and reappraisement of state timberlands.

(2) It shall do all acts required of it by the board, and under the direction of the board it has general charge of the timberlands of the state.

(3) It shall, under the supervision of the board, execute all matters pertaining to forestry within the jurisdiction of the state; have charge of all firewardens of the state and direct and aid them in their duties; direct the protection, improvement, and condition of state forests; take such action as is authorized by law to prevent and extinguish forest, brush, and grass fires; enforce the laws pertaining to forest and brushcover lands and prosecute for any violation of those laws.

(4) The department shall establish and maintain forest fire control training programs for state firefighters and other persons requiring training.

History: **En. Sec. 10, Ch. 147, L. 1909; amd. Sec. 2, Ch. 118, L. 1911; re-en. Sec. 1831, R.C.M. 1921; re-en. Sec. 1831, R.C.M. 1935; amd. Sec. 1, Ch. 218, L. 1955; amd. Sec. 34, Ch. 93, L. 1969; amd. Sec. 102, Ch. 253, L. 1974; amd. Sec. 16, Ch. 397, L. 1977; R.C.M. 1947, 81-1411.**

77-5-104. Firewardens. The department of natural resources and conservation shall appoint firewardens in such number and localities as it considers necessary. Every sheriff, undersheriff, deputy sheriff, state fish, wildlife, and parks warden, the state fish, wildlife, and parks director, members of the board of natural resources and conservation, the director of the department of natural resources and conservation and employees of the department designated by him, officers of organized forest protection districts, members of the Montana highway patrol, officers of the national park service residing in Montana, and officers of the bureau of Indian affairs are firewardens but may not receive any additional compensation by reason of the duties hereby imposed. The supervisors and rangers of the federal forest lands within this state, whenever they formally accept the duties and responsibilities of firewardens, may be appointed firewardens. The firewardens shall promptly report all fires to the department of natural resources and conservation, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders.

History: En. Sec. 11, Ch. 147, L. 1909; re-en. Sec. 1833, R.C.M. 1921; re-en. Sec. 1833, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1955; amd. Sec. 103, Ch. 253, L. 1974; amd. Sec. 17, Ch. 17, L. 1977; R.C.M. 1947, 81-1412; amd. Sec. 2, Ch. 218, L. 1979.

77-5-105. Powers of firewardens. (1) All firewardens have the power of peace officers to make arrests without warrants for violations in their presence of any state or federal forest laws, and a firewarden is not liable for civil action for trespass committed in the discharge of his duties. A firewarden who has information which shows, with reasonable certainty, that a person has violated any provision of those forest laws shall immediately take action against the offender by making complaint before the proper magistrate, or by information to the proper county attorney and shall obtain all possible evidence pertaining thereto.

(2) All firewardens shall have authority to call upon any able-bodied citizen between the ages of 18 and 50 years, resident in the vicinity, for assistance in putting out fires; and any such person who refuses to obey such summons, except for good and sufficient reason, is guilty of a misdemeanor and upon conviction shall be fined in a sum not less than $15 or more than $50 or imprisonment in the county jail not less than 1 or more than 30 days or both such fine and imprisonment. No citizen shall be called upon to fight fire a total of more than 5 days in one year.

History: (1)En. Sec. 12, Ch. 147, L. 1909; re-en. Sec. 1834, R.C.M. 1921; re-en. Sec. 1834, R.C.M. 1935; amd. Sec. 104, Ch. 253, L. 1974; Sec. 81-1413, R.C.M. 1947; (2)En. Sec. 13, Ch. 147, L. 1909; re-en. Sec. 1835, R.C.M. 1921; re-en. Sec. 1835; R.C.M. 1935; Sec. 81-1414, R.C.M. 1947; R.C.M. 1947, 81-1413(part), 81-1414.

77-5-106. Misconduct by paid firewarden. Failure on the part of a paid firewarden to comply with the duties prescribed in this chapter is a misdemeanor, punishable by a fine of not less than $20 or more than $1,000 or imprisonment in the county jail for not less than 10 days or more than 12 months or by both such fine and imprisonment. Upon his conviction, the district court wherein he is convicted shall immediately declare his office vacant and notify the proper appointing power thereof.

History: En. Sec. 12, Ch. 147, L. 1909; re-en. Sec. 1834, R.C.M. 1921; re-en. Sec. 1834, R.C.M. 1935; amd. Sec. 104, Ch. 253, L. 1974; R.C.M. 1947, 81-1413(part).

Part 2

Timber Sales and Removal

77-5-201. Sale of timber. (1) Under the direction of the board, the department of natural resources and conservation may sell the timber crop and other crops of the forests after examination, estimate, appraisal, and report and under such rules as may be established by the board.

(2) Timber proposed for sale in excess of 100,000 board feet shall be advertised in a paper of the county in which the timber is situated for a period of at least 30 days, during which time the department shall receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

(3) In cases of emergency due to fire, insect, fungus, parasite, or blowdown, timber proposed for sale not in excess of 200,000 board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any or all bids, upon approval of the board, or it shall award the sale to the highest responsible bidder.

History: **En. Sec. 4, Ch. 179, L. 1925; re-en. Sec. 1830.4, R.C.M. 1935; amd. Sec. 98, Ch. 253, L. 1974; amd. Sec. 1, Ch. 301, L. 1977; R.C.M. 1947, 81-1404(part).**

77-5-202. Agreement with purchaser — bond. (1) Upon award of sale the purchaser shall execute a formal agreement, approved by the board, which describes the area on which the timber is to be cut, the approximate quantity to be cut by species, and the rate for each product of each species. The agreement shall stipulate that all timber shall be paid for in advance of cutting, fix a date for termination of the agreement, and define rules of silviculture, cutting, utilization, scaling, and slash disposal and such other rules as in the discretion of the board are essential to the perpetuation of the state forests.

(2) As a guarantee for the faithful performance of the agreement, the purchaser shall be required to furnish a bond, with sufficient sureties, to the state of Montana, in an amount equal to at least 20% of the estimated value of timber sold.

History: **(1)En. Sec. 4, Ch. 179, L. 1925; re-en. Sec. 1830.4, R.C.M. 1935; amd. Sec. 98, Ch. 253, L. 1974; amd. Sec. 1, Ch. 301, L. 1977; Sec. 81-1404, R.C.M. 1947; (2)En. Sec. 5, Ch. 179, L. 1925; re-en. Sec. 1830.5, R.C.M. 1935; Sec. 81-1405, R.C.M. 1947; R.C.M. 1947, 81-1404(part), 81-1405.**

77-5-203. Breach of timber sale agreement. For breach of timber sale agreement, the department of natural resources and conservation may suspend cutting or removal of the timber and take such steps as are advisable upon advice and counsel of the attorney general to adjust the breach or to liquidate the state's claim for damages or it may submit the case with full report as to damages sustained by the state to the attorney general for collection on the bond.

History: **En. Sec. 6, Ch. 179, L. 1925; re-en. Sec. 1830.6, R.C.M. 1935; amd. Sec. 99, Ch. 253, L. 1974; R.C.M. 1947, 81-1406.**

77-5-204. Sale of timber — fees for brush disposal and timber stand improvement. (1) The board may sell timber on state lands, at such price per 1,000 feet as in its judgment is in the best interest of the state, but not otherwise; but no such sale of live timber shall be less than $3 per 1,000 feet for white pine, yellow pine, and spruce or less than $1.50 per 1,000 feet for all other timber species.

(2) All timber sold or cut from state lands shall be cut and removed under such rules for the preservation of standing timber and the prevention of fires as the board prescribes. In all cases the board must require the

person cutting the timber to pile and burn or otherwise dispose of the brush and slashings in such manner as may be required.

(3) Before any sale is granted, the timber shall be estimated and appraised under the direction of the department of natural resources and conservation, upon the request and subject to the approval of the board. These estimates and appraisals shall show as nearly as possible the amount and values per 1,000 feet of all merchantable timber, together with a statement of the situation of the timber relative to risk from fires or damage of any kind, its distance from the nearest lake, stream, or railroad, and its value and position as a protection to a watershed.

(4) The board may set fees for brush disposal on state lands. The board may also establish a fee for timber stand improvement on timber cut on state lands. Such fees shall be deposited in the earmarked revenue fund to the credit of the department of natural resources and conservation.

History: **En. Sec. 3560, p. 193, L. 1897; re-en. Sec. 2213, Rev. C. 1907; amd. Sec. 53, Ch. 147, L. 1909; amd. Sec. 4, Ch. 118, L. 1911; amd. Sec. 1, Ch. 26, L. 1919; re-en. Sec. 1872, R.C.M. 1921; amd. Sec. 1, Ch. 132, L. 1933; re-en. Sec. 1872, R.C.M. 1935; amd. Sec. 219, Ch. 147, L. 1963; amd. Sec. 82, Ch. 428, L. 1973; R.C.M. 1947, 81-1601.**

77-5-205. Approval or disapproval of sales. All sales of timber on state lands shall be subject to the approval and confirmation by the board, and no sale shall be deemed completed until after such approval and confirmation. The board shall have the power and it shall be its duty to disapprove any sale which in its opinion would be disadvantageous to the state.

History: **En. Sec. 82, Ch. 60, L. 1927; re-en. Sec. 1805.82, R.C.M. 1935; R.C.M. 1947, 81-918(part).**

77-5-206. Management of timber by department of natural resources and conservation. (1) The department of natural resources and conservation shall supervise all the management of timber before it is cut and secure the most complete utilization of all forest products consistent with the current forest management practices.

(2) It shall instruct and supervise the cruisers, forest wardens, and scalers in the conduct of their work and fix and establish the standard practice in timber sales administration. It shall require that each merchantable log be scaled by the Scribner Decimal C log rule at the small end on the average diameter inside bark taken to the nearest inch and that deduction be made for any apparent defect, or it shall fix and determine converting factors and units of measure for all forest products, which shall be as nearly as practical equivalent to the Scribner Decimal C log scale.

(3) Records of converting factors, units of measure, and the scale of logs shall be kept as a permanent public record showing the date of scale or measurement, the designation of the scale, and the name of the scaler.

(4) Where the volume of timber involved is not in excess of 1 million board feet log scale, the department of natural resources and conservation may designate each tree to be cut and make a tree scale measurement of all trees to be sold.

History: **En. Sec. 8, Ch. 179, L. 1925; re-en. Sec. 1830.8, R.C.M. 1935; amd. Sec. 1, Ch. 40, L. 1945; amd. Sec. 1, Ch. 219, L. 1955; amd. Sec. 1, Ch. 145, L. 1963; amd. Sec. 100, Ch. 253, L. 1974; R.C.M. 1947, 81-1408.**

77-5-207 through 77-5-210 reserved.

77-5-211. Free permit to remove timber. Permits may be issued free of charge for dead, down, or inferior timber in such quantities and under such restrictions and regulations as the board may approve for fuel and domestic purposes to residents and settlers of the state.

History: En. Sec. 7, Ch. 179, L. 1925; re-en. Sec. 1830.7, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1955; R.C.M. 1947, 81-1407(part).

77-5-212. Commercial permits for timber removal. (1) Permits may be issued to citizens of the state for commercial purposes at commercial rates without advertising under such restrictions and rules as the board may approve for timber in quantities of less than 100,000 feet board measure; and in cases of emergency due to fire, insect, fungus, parasite, or blowdown and no other, in quantities of less than 200,000 feet board measure.

(2) Repeated permits of this kind shall not be issued to avoid advertising and the consequent competition secured thereby.

History: En. Sec. 7, Ch. 179, L. 1925; re-en. Sec. 1830.7, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1955; R.C.M. 1947, 81-1407(part).

77-5-213. Permits for farm and ranch repair and development. Permits for cutting and removal of timber may be issued to farmers, ranchers, and prospectors with such restrictions and regulations as the board may approve for timber in quantities of 25,000 feet board measure or less when it is to be used for domestic purposes in the repair and development of the ranch or farm; provided, that not to exceed 25,000 feet board measure shall be granted in any one year to any one person. The rates of charge for such permits shall be fixed by the board.

History: En. Sec. 7, Ch. 179, L. 1925; re-en. Sec. 1830.7, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1955; R.C.M. 1947, 81-1407(part).

CHAPTER 6

AGRICULTURAL, GRAZING, AND OTHER SURFACE LEASES

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Part 1

General Provisions

77-6-101. Statement of policy. It is hereby declared to be the policy of the state, that in the interest of accomplishing a sustained income for the school and other trust funds to be derived from land grant and other state lands, agricultural and grazing lands and town and city lots shall be appraised from time to time but not less than once during the term of every lease by competent appraisers. The purpose of such appraisals shall be to determine the rental value of agricultural lands and town and city lots, the general condition of the lands, and the carrying capacity of grazing lands.

History: **En. Sec. 1, Ch. 207, L. 1945; amd. Sec. 1, Ch. 260, L. 1963; R.C.M. 1947, 81-401.**

77-6-102. Leases of agricultural and grazing lands and city lots authorized. Under the general direction and control of the board, the department shall lease all agricultural and grazing lands and all town and city lots open to leasing upon proper application.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(part).

77-6-103. Lease of state land to United States for military purposes authorized. The board, when it considers it in the public interest, may lease to the United States for military purposes any state land, whether such land was received by the state through federal land grants or whether such land consists of so-called "mortgage lands", on such terms and conditions as it considers necessary to promote the public welfare and protect the interests of the state. Rental shall be payable at the end of each year of the lease.

History: En. Sec. 1, Ch. 122, L. 1943; amd. Sec. 25, Ch. 428, L. 1973; R.C.M. 1947, 81-424.

77-6-104. Leasing rules. The board may prescribe rules relating to the leasing of state lands as it considers necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they are granted to the state of Montana.

History: En. Sec. 37, Ch. 60, L. 1927; re-en. Sec. 1805.37, R.C.M. 1935; amd. Sec. 24, Ch. 428, L. 1973; R.C.M. 1947, 81-423.

77-6-105. Criteria for determining land to be included in single lease. (1) All lands shall be leased in as compact bodies as possible, and care shall be taken not to separate parts of any section from the section lines or public highways or from any available water supply or in a form that will make it more difficult to lease the remaining state lands in the section in which they are located.

(2) There may be included under one lease tracts of lands embracing more than one section.

History: (1)En. Sec. 27, Ch. 60, L. 1927; re-en. Sec. 1805.27, R.C.M. 1935; amd. Sec. 3, Ch. 257, L. 1965; amd. Sec. 16, Ch. 428, L. 1973; Sec. 81-413, R.C.M. 1947; (2)En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; Sec. 81-407, R.C.M. 1947; R.C.M. 1947, 81-407(part), 81-413(part).

77-6-106. Leased lands subject to later sale. All leases of agricultural or grazing lands or town or city lots shall be upon condition that the board may, in its discretion, offer the land for sale at any regular public sale of state lands held in the county where the land is situated, upon the same terms and in the same manner as land not under lease.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(4).

77-6-107. Leases of land wanted for both agricultural and grazing use. If there are applications or bids for renting certain land for grazing purposes and also applications or bids for renting the same land for agricultural purposes, an inspection of the land shall be made by the department at the earliest practical opportunity and a determination made, based on its findings, of the highest and best use which can be made of the land or portions thereof. Any lease of the land subsequent to the applications or bids shall be such as to return to the state revenue commensurate with the highest and best use.

History: En. Sec. 27, Ch. 60, L. 1927; re-en. Sec. 1805.27, R.C.M. 1935; amd. Sec. 3, Ch. 257, L. 1965; amd. Sec. 16, Ch. 428, L. 1973; R.C.M. 1947, 81-413(part).

77-6-108. Who may lease. No person may lease state lands, except one who is the head of a family, unless he has attained the age of 18 years. Any such person and any association, company, or corporation authorized to hold lands under lease may lease state lands and may hold more than one lease to state lands.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; R.C.M. 1947, 81-407(part).

77-6-109. Duration of lease. No lease to agricultural or grazing lands may be for a period other than 5 or 10 years. Leases for city and town lots may not exceed 25 years.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; R.C.M. 1947, 81-407(part).

77-6-110. Lease expiration dates. All leases for agricultural lands, grazing lands issued after February 27, 1939, no matter on what date issued, shall expire on February 28 within 10 years from the date on which the lease becomes effective.

History: En. Sec. 24, Ch. 60, L. 1927; re-en. Sec. 1805.24, R.C.M. 1935; amd. Sec. 3, Ch. 65, L. 1939; amd. Sec. 4, Ch. 135, L. 1974; R.C.M. 1947, 81-408.

77-6-111. Uniform lease renewal. Notwithstanding any other section in this chapter, the department may, in order to achieve uniformity in the number of lease renewals per year, issue 4-, 5-, and 6-year grazing and agricultural leases during the 5-year period 1979-1983. Leases to be issued for other than 10-year terms shall be chosen by means of a nondiscretionary, random process and shall be limited to those leases which were not subject to competitive bid at the previous renewal.

History: En. 81-407.1 by Sec. 1, Ch. 304, L. 1977; R.C.M. 1947, 81-407.1.

77-6-112. Liens on crops and improvements. (1) The state has a lien upon all crops growing upon any of its lands and upon the crops after they have been separated from the lands for any rentals and penalties due or delinquent under the lease on the lands or becoming due during the calendar year in which the crops are harvested, for any year or part of a year that the land has been held or used by the lessee. This lien applies to all buildings, structures, fences, and all other improvements and is prior and superior to all other liens, except threshermen's liens and seed liens specified in 71-3-701 and 71-3-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated.

(2) Any person acquiring any of these crops or improvements takes them subject to this lien. The department or the sheriff of the county in which the land is located may demand of the lessee payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand or the department may seize and sell, either at a private or public sale, upon giving notice for not less than 3 days of the sale, sufficient of those crops or improvements, or of both, to pay the amounts due the state together with costs and expenses of seizure and sale. These provisions relating to liens on crops and improvements shall be embodied in all leases for agricultural and grazing lands and for town, city, or other lots.

History: En. Sec. 31, Ch. 60, L. 1927; re-en. Sec. 1805.31, R.C.M. 1935; amd. Sec. 20, Ch. 428, L. 1973; R.C.M. 1947, 81-418.

77-6-113. Lease conditions — cancellation. (1) It shall be a condition of all leases of agricultural or grazing state lands that:

(a) in the case of agricultural lands, the lessee shall observe the ordinary rules for good management of agricultural lands and shall handle the leased land with the view of maintaining its productivity and minimizing wind and soil erosion and noxious weeds and planting crops with a view of securing the greatest yields of good quality; and

(b) in the case of grazing lands, the lessee shall observe the ordinary rules for good range management and shall manipulate the numbers, class, distribution, and season of the range use and the handling, feeding, breeding, and marketing of grazing livestock with a view of securing the production of the maximum of livestock and livestock products, consistent with the conservation of the land resources and the perpetuation of its productivity, and to these ends the state land lease may not be abused by overgrazing.

(2) For the gross violation of any of these rules, the lease involved shall be canceled by the department, subject to the appeal procedure provided in 77-6-211.

History: En. Sec. 10, Ch. 207, L. 1945; amd. Sec. 4, Ch. 254, L. 1947; amd. Sec. 3, Ch. 27, L. 1971; amd. Sec. 18, Ch. 428, L. 1973; R.C.M. 1947, 81-415.

77-6-114. Lessee responsible for assessments and taxes for weed control. It shall be the duty of the board in leasing any agricultural state land to provide in such lease that the lessee of lands so leased lying within the boundaries of any noxious weed control and weed seed extermination district shall assume and pay all assessments and taxes levied by the board of county commissioners for such district on such state lands, and such assessments and tax levy shall be imposed on such lessee as a personal property tax and shall be collected by the county treasurer in the same manner as regular personal property taxes are collected. All such state lessees shall be required under the terms of such lease to pay such assessment and tax levy at the same time and manner as other regular personal taxes are paid.

History: En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part).

77-6-115. Acquisition of water right by lessee. (1) The lessee of state lands may at any time prior to 1 year before the expiration of his lease make application to the board for permission to secure a water right to the land under his lease. Such application shall be in writing, shall show how much of the land can be irrigated, the permanency of the water supply, and the probable cost of placing the land under irrigation. If the proposed plan meets with the approval of the board, permission shall be granted the lessee to secure the desired water right for the land and to place the same under irrigation.

(2) If such water right becomes a permanent and valuable improvement, then in case of the sale or lease of the lands to other parties, the former lessee shall be entitled to receive compensation in the amount of the reasonable value thereof, as in the case of other improvements, from the new lessee or the purchaser.

(3) These provisions shall not be so construed as to make the state liable to the lessee for the payment of the cost or value of such irrigation improvements.

History: En. Sec. 33, Ch. 60, L. 1927; re-en. Sec. 1805.33, R.C.M. 1935; R.C.M. 1947, 81-420.

Part 2

Leasing Procedure

77-6-201. Appraisal of grazing lands. (1) The department shall appraise the grazing lands owned by the state as to their animal-unit-month carrying capacity and make and preserve records thereof in its office and from time to time reexamine these lands as to their animal-unit-month carrying capacity so as to keep the records thereof in its office reasonably accurate.

(2) In appraising these grazing lands the following factors shall be taken into consideration:

(a) inventory of the forage resources—kind, amount, and location of vegetation;

(b) accessibility and usability of this forage resource as influenced by topography, availability of stock water, and season of usability;

(c) condition of soils—the erosion situation;

(d) other and related resources such as timber, game animals, need for watershed protection;

(e) record of needed improvements and facilities—fuel and stock water, revegetation, rodent control, trails, fences, and the like;

(f) pertinent facts and figures submitted by stockmen living in the area and directors of state grazing districts including the land or in its vicinity;

(g) carrying capacity set for similar land in a state grazing district in which the land is situated.

History: En. Sec. 4, Ch. 207, L. 1945; amd. Sec. 11, Ch. 428, L. 1973; R.C.M. 1947, 81-404.

77-6-202. Lease by competitive bidding. When the department receives an application to lease an unleased tract, it shall advertise for bids on the tract. The tract shall be leased to the highest bidder unless the board determines that the bid is not in the state's best interest for the reasons set forth in 77-6-205(2). If the high bid is rejected, the board shall set forth the reasons for the rejection in writing. The lease shall then be issued, at a rental to be determined by the board, to the first bidder willing to pay the board determined rental whose name is selected through a random selection process from all bidders on the tract.

History: En. Sec. 21, Ch. 60, L. 1927; re-en. Sec. 1805.21, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977; R.C.M. 1947, 81-405(3).

77-6-203. Bid deposit. (1) A person bidding for the lease of state lands shall deposit with the department, as evidence of good faith, a certified check, cashier's check, or money order in an amount equal to 20% of the annual rental bid in the case of grazing land and an amount equal to $1 per acre for each acre of agricultural land contained in the lease in the case of agricultural land on which the bid is made on a crop share basis.

(2) The department shall retain the deposit of the successful bidder, apply it on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder. The department shall return the deposits of the unsuccessful bidders.

(3) If the successful bidder fails to execute the lease for any reason, his deposit shall be forfeited and deposited by the department to the credit of the proper interest and income account in the federal and private revenue fund.

History: En. Sec. 1, Ch. 185, L. 1963; amd. Sec. 29, Ch. 428, L. 1973; amd. Sec. 1, Ch. 133, L. 1974; R.C.M. 1947, 81-436.

77-6-204. Notification of termination of lease. When a lease expires or is canceled, the department shall immediately notify the holder of the lease and all persons who have expressed an interest in leasing the land during or immediately preceding the term of the expired or canceled lease.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; R.C.M. 1947, 81-407(part).

77-6-205. Renewal leases. (1) A lessee of state land classed as agricultural, grazing, town lot or city lot who has paid all rentals due from him to the state and who has not violated the terms of his lease, is entitled to have his lease renewed for a 5- or 10-year period at any time within 30 days prior to its expiration if no other applications for lease of the land have been received 30 days prior to the expiration of his lease. The renewal shall be at the rental rate provided by law for the renewal period and subject to any other conditions at the time of the renewal imposed by law as terms of the lease. If other applications have been received, the holder of the lease has the preference right to lease the land covered by his former lease by meeting the highest bid made by any other applicant. Applications for lease of lands in this section shall be given preference in the order of their receipt at the office of the department.

(2) The board shall accept the highest bid. If the lessee exercises the preference right and believes the bid to be excessive, he may request an administrative hearing. Such request must contain a statement of reasons why the lessee believes the bid not to be in the state's best interest and must be accompanied by a deposit equal to 20% of the competitive bid in the case

of grazing lands and $1 per acre in the case of agricultural lands. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the bid may not be in the state's best interests. The board may, after the hearing, reduce the rental from the amount bid if the lessee shows that the bid is not in the best interest of the state because it is above community standards for a lease of such land, would cause damage to the tract, or impair its long-term productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and so inform the lessee and competitive bidder. It is the duty of the board to secure the best lessees possible, so that the state may receive the maximum return possible with the least injury occurring to the land.

History: En. Sec. 21, Ch. 60, L. 1927; re-en. Sec. 1805.21, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977; R.C.M. 1947, 81-405(1), (2).

77-6-206. Withdrawal of lands from leasing. Notwithstanding the foregoing provisions, the board may withdraw any agricultural or grazing land from further leasing for such period as the board determines to be in the best interest of the state. Bids for leases and applications for renewals of leases of state agricultural lands or state grazing lands shall be in writing and sealed and shall be submitted to the board at the office of the department.

History: En. Sec. 21, Ch. 60, L. 1927; re-en. Sec. 1805.21, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977; R.C.M. 1947, 81-405(4).

77-6-207. Form of lease — bond optional. The general form of lease to state lands shall be prescribed by the board, and no changes in the form for these leases may be made without the approval of the board. All leases shall be issued in duplicate, one copy shall be mailed to the lessee, and one copy shall be preserved by the department. Unless the board decides otherwise, these leases shall be issued without bonds, but the board may require a bond and prescribe the form and conditions thereof whenever it considers it necessary.

History: En. Sec. 29, Ch. 60, L. 1927; re-en. Sec. 1805.29, R.C.M. 1935; amd. Sec. 19, Ch. 428, L. 1973; R.C.M. 1947, 81-416.

77-6-208. Assignment of leases. Leases to state lands may be assigned on blanks prescribed by the department, but no assignment is binding on the state unless the assignment is filed with the department, approved by it and payment made of the assignment fee under 77-1-302. Preference shall always be given to the applicant who wants the land for his own individual use, so that the full advantage coming from the leasing and use of the lands may reach those who actually till the soil and so that they are not compelled to pay a higher rental than that due the state. If a lessee subleases state lands on terms less advantageous to the sublessee than the terms given by the state or subleases state lands without filing a copy of the sublease with the department and without receiving its approval, the department shall cancel the lease, subject to the appeal procedure provided in 77-6-211.

History: En. Sec. 32, Ch. 60, L. 1927; re-en. Sec. 1805.32, R.C.M. 1935; amd. Sec. 1, Ch. 14, L. 1937; amd. Sec. 12, Ch. 207, L. 1945; amd. Sec. 18, Ch. 121, L. 1965; amd. Sec. 3, Ch. 22, L. 1971; amd. Sec. 4, Ch. 27, L. 1971; amd. Sec. 21, Ch. 428, L. 1973; R.C.M. 1947, 81-419.

77-6-209. Change from grazing lease to agricultural lease. (1) When land is leased for grazing purposes and the lessee desires to cultivate any part of the land, he shall, before doing any such cultivation, make application to the department stating how much land he desires to cultivate and showing the location in the section of the land and agree that for the remainder of the term of the lease the annual rental shall be at the rate of the original lease until such time as the first crop is harvested from the cultivated portion of the lease. At the time of the first harvest, the lease shall be at the original rate for that portion remaining as grazing land plus the crop share rental for that portion cultivated. If any person cultivates lands leased for grazing purposes without first securing the right to do so under this section, the department shall either cancel the lease, subject to the appeal procedure provided in 77-6-211, or require the lessee to pay twice the regular agricultural rental on the land so cultivated in addition to the grazing rental.

(2) The provisions of this section shall be incorporated in every lease.

History: En. Sec. 28, Ch. 60, L. 1927; re-en. Sec. 1805.28, R.C.M. 1935; amd. Sec. 9, Ch. 207, L. 1945; amd. Sec. 1, Ch. 120, L. 1963; amd. Sec. 2, Ch. 27, L. 1971; amd. Sec. 17, Ch. 428, L. 1973; R.C.M. 1947, 81-414.

77-6-210. Cancellation of leases. The department may cancel a lease for any of the following causes: fraud, misrepresentation, or concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; using the land for other purposes than those authorized by the lease; and for any other cause which in the judgment of the department makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state. Such cancellation does not entitle the lessee to any refund of rentals paid or exemption from the payment of any rentals, penalties, or other compensation due the state.

History: En. Sec. 36, Ch. 60, L. 1927; re-en. Sec. 1805.36, R.C.M. 1935; amd. Sec. 5, Ch. 27, L. 1971; amd. Sec. 23, Ch. 428, L. 1973; R.C.M. 1947, 81-422(1).

77-6-211. Procedure to cancel lease — appeal. (1) When the department cancels a lease pursuant to 77-6-113, 77-6-208, 77-6-209, or 77-6-210, it shall immediately notify the lessee by certified mail of the cancellation and the reasons therefor. The date of cancellation is 15 days from the date the notice is received by the lessee.

(2) The lessee has 15 days after the receipt of the notice to file with the department a notice of appeal for a hearing before the board. If notice of appeal is filed, the lease remains in effect until the decision of the board. Within 10 days after notice of appeal has been filed, the department shall set the time and place of hearing and shall so notify the lessee. The board may, after 10 days' notice to the lessee, change the time and place of hearing.

(3) Under rules it adopts, the board shall conduct an open hearing to determine whether the lease should be reinstated. The burden of proof is on the lessee to show why the lease should not be canceled. If the lease is reinstated, all of the lessee's rights and privileges thereunder shall be preserved; if not, the land shall be open for re-leasing as provided by law. If the board finds that the terms of the lease have been violated but in its judgment the violation is not serious enough to warrant cancellation, it may reinstate the

lease and assess a penalty up to three times the annual rental against the lessee.

History: En. Sec. 36, Ch. 60, L. 1927; re-en. Sec. 1805.36, R.C.M. 1935; amd. Sec. 5, Ch. 27, L. 1971; amd. Sec. 23, Ch. 428, L. 1973; R.C.M. 1947, 81-422(2), (3).

Part 3

Improvements

77-6-301. Improvements authorized. A lessee of state lands may place upon the lands a reasonable amount of improvements directly related to conservation of the land or necessary for proper utilization of it. These improvements may consist of fences, cultivation, improvement of the land itself, irrigation ditches, sheds, wells, reservoirs, and similar improvements.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).

77-6-302. Compensation for improvements. (1) When another person becomes the lessee of such lands, he shall pay to the former lessee the reasonable value of these improvements at the time the new lessee takes possession.

(2) If the former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the value shall be ascertained and fixed as provided in 77-6-306.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).

77-6-303. Determination of compensation. (1) In determining the value of these improvements, consideration shall be given to their original cost, their present condition, their suitableness for the uses ordinarily made of the lands on which they are located, and to the general state of cultivation of the land, its productive capacity as affected by former use, and its condition with reference to the infestation of noxious weeds. Consideration shall be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirableness for the new lessee.

(2) However, if any of the improvements consists of breaking (meaning the original plowing of the land) and 1 year's crops have been raised on the land after the breaking, the compensation for the breaking may not exceed $2.50 per acre, and if two or more crops have been raised on the land after the breaking, the breaking shall not be considered as an improvement to the land.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).

77-6-304. Removal of improvements. The former lessee may, however, remove the movable improvements on the land and dispose of them to parties other than the lessee. If he fails to remove the improvements from the land within 60 days from the date of the expiration of his lease, all of the improvements become the property of the state unless the department for good cause grants additional time for their removal.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).

77-6-305. Settlement regarding improvements prerequisite to issuance of new lease. Before a lease is issued to the new lessee, he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under 77-6-306 or that he has offered to pay the value of the improvements as so fixed and determined or that the former lessee elects to remove the improvements.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).

77-6-306. Arbitrators to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell these improvements to the new lessee and they are unable to agree on the value thereof, the value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee, and the third by the two arbitrators so appointed. The value of the improvements shall be ascertained and fixed as this part provides.

(2) The reasonable compensation that the arbitrators may fix shall be paid in equal shares by the owner of the improvements and the new lessee.

(3) The value of the improvements so ascertained and fixed is binding on both parties, however, if either party is dissatisfied with the valuation so fixed, he may within 10 days appeal from their decision to the department which shall examine the improvements, and its decision shall be final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in such proportion as in its judgment justice may demand.

History: En. Sec. 22, Ch. 60, L. 1927; re-en. Sec. 1805.22, R.C.M. 1935; amd. Sec. 4, Ch. 260, L. 1963; Sec. 81-406, R.C.M. 1947; redes. 81-421.1 and amd. by Sec. 13, Ch. 428, L. 1973; R.C.M. 1947, 81-421.1.

Part 4

Pledges and Mortgages of Leasehold Interests

77-6-401. Pledge or mortgage of leasehold interest in state lands. Any lessee of a grazing or agricultural lease of state lands is hereby authorized to pledge said lease or mortgage his leasehold interest in said lands.

History: En. Sec. 1, Ch. 52, L. 1947; R.C.M. 1947, 81-425.

77-6-402. Filing with board required. The pledgee of such lease or the mortgagee of such leasehold interest shall, within 30 days after receipt of the pledge agreement or mortgage, file it or a certified copy thereof with the department.

History: En. Sec. 2, Ch. 52, L. 1947; amd. Sec. 21, Ch. 121, L. 1965; amd. Sec. 4, Ch. 22, L. 1971; amd. Sec. 26, Ch. 428, L. 1973; R.C.M. 1947, 81-426.

77-6-403. Transfer of lease. Upon due proof of the acquisition of such lease or leasehold interest by any person under or pursuant to such pledge agreement or mortgage, the board shall transfer said lease to said person, who shall thereupon be subject to all the conditions, obligations, and liabilities and entitled to all the rights and privileges provided for in said lease.

History: En. Sec. 3, Ch. 52, L. 1947; R.C.M. 1947, 81-427.

77-6-404. Proof of termination of pledge or mortgage to be filed. The lessee of any grazing or agricultural lease of or leasehold interest in state lands which is pledged or mortgaged as provided in this part shall, within 30 days after payment of the indebtedness secured thereby or within 30 days after the pledge agreement is terminated or the leasehold interest is released from the mortgage, file with the department proof of that fact.

History: En. Sec. 4, Ch. 52, L. 1947; amd. Sec. 20, Ch. 121, L. 1965; amd. Sec. 5, Ch. 22, L. 1971; amd. Sec. 27, Ch. 428, L. 1973; R.C.M. 1947, 81-428.

Part 5

Rental Provisions

77-6-501. Agricultural leases. (1) As to agricultural lands, all leases shall be continued or made upon a crop share rental basis of not less than one-fourth of the annual crops to the state or the usual landlord's share prevailing in the district, whichever is greater. The board may, however, approve special crop share rentals of less than one-fourth for high production cost crops such as but not limited to potatoes and sugar beets. The board may not delegate the authority to approve such special crop share rentals.

(2) In unusual cases the department may authorize a lease upon other basis than crop share, but in these unusual cases the rental shall at least equal the value of the usual landlord's share prevailing in the district, and the department shall set forth in the records the unusual conditions of the case and the rental to be charged.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(part).

77-6-502. Grazing leases. (1) The rental rate for leasing all state grazing lands shall be based upon the appraised animal-unit-month carrying capacity of the land as provided in 77-6-507.

(2) If the legislature raises the rentals for state grazing lands during the term of any leases of grazing land which are not issued as a result of competitive bidding, the lessee shall, for the years after the increase becomes effective, pay the increased rental, and the terms of grazing leases shall so provide.

History: (1)En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; Sec. 81-402, R.C.M. 1947; (2)En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch.

260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; Sec. 81-407, R.C.M. 1947; R.C.M. 1947, 81-402(part), 81-407(part).

77-6-503. Leases of city lots. As to town and city lots owned by the state, the fair rental value thereof shall be determined from time to time by the department with the approval of the board and a record made thereof, and such town or city property may be leased at its current appraised rental value for terms not to exceed 25 years.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(part).

77-6-504. Lease rentals for part year. Lease rentals for agricultural or grazing state land, where the lease term begins after February 28 in the initial year of the lease, shall be for the whole of the yearly rate for the fractional part of the initial year if the lease term begins prior to July 1 in such fractional part of year, and for one-half the yearly rate for such fractional part of the year if the lease term begins after June 30 in the initial year and prior to the succeeding February 28.

History: En. Sec. 7, Ch. 207, L. 1945; R.C.M. 1947, 81-410.

77-6-505. No reduction for summer fallow. No credit or reduction or refund in rental shall be allowed any lessee of agricultural or grazing state land on account of summer fallow.

History: En. Sec. 8, Ch. 207, L. 1945; R.C.M. 1947, 81-411.

77-6-506. Date when rental due — cancellation for nonpayment. The rental for the first year of the lease shall be paid at or before the time of the execution of the lease; however, in the case of leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1 shall be paid and collected at the time of issuing the lease. If the United States is the lessee of state lands for grazing purposes, the rental shall be payable at the end of each year of the lease. The rental for each succeeding year on leases hereafter issued, with the exception of leases wherein the United States is the lessee, is due and payable before March 1, and if not paid by April 1 the lease is canceled. The department shall notify the lessee by letter addressed to the post-office address given in the lease of the cancellation, and the land is then open for lease to other applicants.

History: En. Sec. 26, Ch. 60, L. 1927; re-en. Sec. 1805.26, R.C.M. 1935; amd. Sec. 1, Ch. 197, L. 1943; amd. Sec. 2, Ch. 22, L. 1971; amd. Sec. 15, Ch. 428, L. 1973; R.C.M. 1947, 81-412.

77-6-507. Formula for fixing annual rental. (1) In this section:

(a) "animal unit" means one cow, one horse, five sheep, or five goats;

(b) "animal-unit-month carrying capacity" means that amount of natural feed necessary for the complete subsistence of one animal unit for 1 month.

(2) The board shall establish the per annum rental rate per section of all grazing lands which are the property of the state upon the animal-unit-month basis as provided in this section.

(3) In fixing the minimum annual rental per section, the following formula shall be used:

(a) The base rental shall be computed by multiplying six times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.

(b) The minimum annual rental for grazing lands with an annual carrying capacity of more than 14 and less than 20 animal units per section is the base rental.

(c) The minimum annual rental for grazing lands with an annual carrying capacity of more than 19 animal units per section is 10 cents more than the base rental.

(d) The minimum annual rental for grazing lands with an annual carrying capacity of less than 15 animal units per section is 10 cents less than the base rental.

(4) The carrying capacity of the land to be used in the above formula shall be in accordance with the determinations of the department made under 77-6-201.

(5) The average price per pound of beef cattle on the farm in Montana shall be taken from statistics published by the United States department of agriculture current at the time of computation of the rental or from other reliable sources current at such time.

History: **En. Sec. 2, Ch. 190, L. 1949; amd. Sec. 1, Ch. 229, L. 1951; amd. Sec. 1, Ch. 284, L. 1959; amd. Sec. 6, Ch. 260, L. 1963; amd. Sec. 1, Ch. 97, L. 1973; amd. Sec. 28, Ch. 428, L. 1973; R.C.M. 1947, 81-433; amd. Sec. 1, Ch. 259, L. 1979.**

77-6-508. Effect of competitive bidding. Whenever competitive bidding shall establish a rental price higher than the rental price established by the above formula, the board in leasing such lands shall incorporate in said lease such conservation requirements as are deemed necessary for the protection of such grass or forage crops.

History: **En. Sec. 3, Ch. 190, L. 1949; R.C.M. 1947, 81-434.**

TITLES 78 AND 79

RESERVED

TITLE 80

AGRICULTURE

Ch.
1. Department of Agriculture.
2. Agricultural Services.
3. Horticulture — Standards, Storage, and Merchandising.
4. Grain — Standards, Storage, and Merchandising.
5. Agricultural Seed.
6. Apiculture.
7. Disease, Pest, and Weed Control.
8. Pesticides.
9. Commercial Feeds.
10. Commercial Fertilizers.
11. Marketing.

CHAPTER 1

DEPARTMENT OF AGRICULTURE

Part 1 — General Provisions

Section
80-1-101. Definition.
80-1-102. Duties of department.

Part 2 — Farm Statistics

80-1-201. Department of revenue to collect farm statistics.
80-1-202. Delivery to director of agriculture.
80-1-203. Statistics, how obtained.
80-1-204. Penalty for refusal to furnish statistics.

Part 1

General Provisions

80-1-101. Definition. Unless the context requires otherwise, in this title "department" means the department of agriculture provided for in Article XII, section 1, of the Montana constitution and in Title 2, chapter 15, part 30.

History: En. 3-106.1 by Sec. 1, Ch. 218, L. 1974; R.C.M. 1947, 3-106.1.

80-1-102. Duties of department. The department shall:

(1) encourage and promote the interests of agriculture, including horticulture and apiculture, and all other allied industries;

(2) collect and publish statistics relating to the production and marketing of crops and other agricultural products so far as the information may be of value to the agricultural and allied interests of the state;

(3) assist, encourage, and promote the organization of farmers' institutes, horticultural and agricultural societies, the holding of fairs, livestock shows, or other exhibits of the products of agriculture;

(4) adopt standards for open and closed receptacles for farm products and standards for the grade and other classification of farm products;

(5) cooperate with producers and consumers in devising and maintaining economical and efficient systems of distribution and aid in the reduction of waste and expense incidental to marketing;

(6) have the authority to maintain a market news service, including information as to crops, freight rates, commission rates, and other matters as may be of service to producers and consumers, and act as a clearinghouse for information of value to producers and consumers;

(7) gather and diffuse information concerning the supply, demand, prevailing prices, and commercial movement of farm products;

(8) investigate the practices and methods of factors, commission merchants, and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grain, vegetables, or other farm products, so that distribution of the commodities is accomplished efficiently, economically, and without hardship, waste, or fraud;

(9) cooperate with Montana state university, the agricultural experiment station, and the federal government for the betterment of the agricultural industries of the state, the improvement of rural life, and promotion of equality of opportunity for the farmers of the state;

(10) take and hold in the name of the state of Montana property, real and personal, acquired by gifts, subscriptions, donations, and bequests;

(11) sell and dispose of personal property owned by it in a manner the department may provide, when in the judgment of the department the sale or disposal best promotes the purposes for which the department is established;

(12) contract in respect to any matter within the scope of its authority;

(13) enforce this title and all other laws for the protection and regulation of agriculture.

History: En. Sec. 7, Ch. 216, L. 1921; re-en. Sec. 3561, R.C.M. 1921; re-en. Sec. 3561, R.C.M. 1935; amd. Sec. 13, Ch. 80, L. 1961; amd. Sec. 2, Ch. 218, L. 1974; R.C.M. 1947, 3-107.

Part 2

Farm Statistics

80-1-201. Department of revenue to collect farm statistics. It shall be the duty of the department of revenue, at the time of making the annual assessment of property to collect such statistics in relation to farm products and agricultural resources from each farm owner, operator, or renter as shall be called for by the director of agriculture and on blanks to be prepared and furnished by the director of agriculture.

History: En. Sec. 1, Ch. 187, L. 1921; re-en. Sec. 2043, R.C.M. 1921; re-en. Sec. 2043, R.C.M. 1935; amd. Sec. 22, Ch. 405, L. 1973; R.C.M. 1947, 84-449.

80-1-202. Delivery to director of agriculture. The original blanks upon which the statistics are gathered by the department of revenue shall be returned to the director of agriculture immediately on completion of the assessment work and not later than July 1 each year.

History: En. Sec. 2, Ch. 187, L. 1921; re-en. Sec. 2044, R.C.M. 1921; re-en. Sec. 2044, R.C.M. 1935; amd. Sec. 23, Ch. 405, L. 1973; R.C.M. 1947, 84-450.

80-1-203. Statistics, how obtained. If for any reason the department of revenue is unable to obtain the statistics from any farm owner, operator, or renter, it shall obtain them from the most reliable source, so that the returns may be complete.

History: En. Sec. 3, Ch. 187, L. 1921; re-en. Sec. 2045, R.C.M. 1921; re-en. Sec. 2045, R.C.M. 1935; amd. Sec. 24, Ch. 405, L. 1973; R.C.M. 1947, 84-451.

80-1-204. Penalty for refusal to furnish statistics. Any farm owner, operator, or renter refusing to furnish the information called for in 80-1-201, or willfully furnishing fraudulent information to the department of revenue, upon proper request therefor, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than $10 or more than $100, and cost of prosecution.

History: En. Sec. 4, Ch. 187, L. 1921; re-en. Sec. 2046, R.C.M. 1921; re-en. Sec. 2046, R.C.M. 1935; amd. Sec. 25, Ch. 405, L. 1973; R.C.M. 1947, 84-452.

CHAPTER 2

AGRICULTURAL SERVICES

Part 1 — Rural Rehabilitation

Section

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Part 1

Rural Rehabilitation

80-2-101. Trust assets of rural rehabilitation corporation — department of agriculture designated to make application. The department of agriculture is designated as the department of Montana state government to apply to the secretary of agriculture of the United States or any other proper federal official under Public Law 499, 81st congress, approved May 3, 1950, for the return of the trust assets, either funds or property, held by the United States as trustee in behalf of the Montana rural rehabilitation corporation.

History: En. Sec. 1, Ch. 112, L. 1951; amd. Sec. 103, Ch. 218, L. 1974; R.C.M. 1947, 3-2801.

80-2-102. Agreements with United States secretary of agriculture authorized. The department shall enter into agreements with the secretary of agriculture of the United States under section 2(f) of Public Law 499, 81st congress, upon terms and conditions and for periods of time as are mutually agreeable, authorizing the secretary of agriculture to accept, administer, spend, and use in the state all or any part of the trust assets or any other funds of the state which may be appropriated for carrying out the purposes of Titles I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions of Title IV thereof, as amended, and do all things necessary to carry out the agreements.

History: En. Sec. 2, Ch. 112, L. 1951; amd. Sec. 104, Ch. 218, L. 1974; R.C.M. 1947, 3-2802.

80-2-103. Administration of trust assets. Funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture under 80-2-102 shall be received by the department and paid by it to the state treasurer for deposit in the federal and private grant clearance fund and used for expenditure or obligation by the department for the purposes of 80-2-102 or for the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may be agreed upon between the department and the secretary of agriculture, subject to Public Law 499.

History: En. Sec. 3, Ch. 112, L. 1951; amd. Sec. 45, Ch. 147, L. 1963; amd. Sec. 105, Ch. 218, L. 1974; R.C.M. 1947, 3-2803.

80-2-104. Powers of department — claims and obligations — property acquired at foreclosure. (1) The department may:

(a) collect, compromise, adjust, or cancel claims and obligations arising out of or administered under this part or under any mortgage, lease, contract, or agreement entered into or administered under this part and, if necessary, pursue them to final collection in any court having jurisdiction;

(b) bid for and purchase at any execution, foreclosure, or other sale or otherwise acquire property upon which the department has a lien by reason of a judgment or execution or which is pledged, mortgaged, or conveyed or which otherwise secures any loan or other indebtedness owing to or acquired by the department under this part;

(c) accept title to any property so purchased or acquired, operate or lease the property for a period necessary to protect the investment, and sell or otherwise dispose of the property in a manner consistent with this part.

(2) The authority granted to the department in this section may be delegated to the secretary of agriculture with respect to funds or assets authorized to be administered and used by him under agreements entered into under 80-2-102.

History: **En. Sec. 4, Ch. 112, L. 1951; amd. Sec. 106, Ch. 218, L. 1974; R.C.M. 1947, 3-2804.**

80-2-105. United States and secretary of agriculture free from liability. The United States and the secretary of agriculture are free from liability by virtue of the transfer of the assets to the department under this part.

History: **En. Sec. 5, Ch. 112, L. 1951; amd. Sec. 107, Ch. 218, L. 1974; R.C.M. 1947, 3-2805.**

80-2-106. Rules. The department may adopt rules necessary to carry out the provisions of this part.

History: **En. 3-2806 by Sec. 1, Ch. 30, L. 1977; R.C.M. 1947, 3-2806.**

Part 2

Hail Insurance

80-2-201. Powers and duties of board of hail insurance. The board of hail insurance provided for in 2-15-3003:

(1) shall hold meetings when necessary and essential for the proper conduct of its business at the state capitol in the office of the director of agriculture, who is secretary of the board;

(2) is hereby authorized, directed, and empowered to make rules as it may from time to time find practical, necessary, and beneficial for the administration of this part;

(3) shall prescribe blank forms for all purposes necessary, proper, and incidental to the effective operation and enforcement of this part; and

(4) shall prescribe a special form outlining the purposes, scope, and benefits of this part in furnishing protection against loss by hail at the actual cost of the risk to all taxpayers who may elect to become subject to the provisions of this part, the form to be submitted by the agent of the department of revenue in each county at the time in which the regular assessments of property are made by the agents to each farmer in each county in the state engaged in growing of crops subject to injury or destruction by hail. Each such farmer

taxpayer shall signify on such forms whether he desires to become subject to the provisions of this part or not.

History: En. Sec. 1, Ch. 169, L. 1917; amd. Sec. 1, Ch. 17, Ex. L. 1918; amd. Sec. 1, Ch. 141, L. 1921; re-en. Sec. 350, R.C.M. 1921; amd. Sec. 1, Ch. 40, L. 1923; re-en. Sec. 350, R.C.M. 1935; amd. Sec. 58, Ch. 391, L. 1973; amd. Sec. 140, Ch. 218, L. 1974; amd. Sec. 2, Ch. 468, L. 1977; R.C.M. 1947, 82-1501(part).

80-2-202. Compensation of chairman and officers. (1) The appointed members of the board of hail insurance shall receive a per diem of $25 for each day they are engaged in the transaction of official business.

(2) All board members and employees shall be allowed expenses as provided in 2-18-501 through 2-18-503.

(3) All other public officials specified in this chapter shall perform the duties relative to hail insurance without other compensation than that allowed by law.

History: En. Sec. 12, Ch. 169, L. 1917; amd. Sec. 2, Ch. 183, L. 1921; re-en. Sec. 363, R.C.M. 1921; amd. Sec. 12, Ch. 40, L. 1923; amd. Sec. 1, Ch. 165, L. 1929; re-en. Sec. 363, R.C.M. 1935; amd. Sec. 1, Ch. 53, L. 1951; amd. Sec. 1, Ch. 165, L. 1961; amd. Sec. 1, Ch. 188, L. 1965; amd. Sec. 11, Ch. 237, L. 1967; amd. Sec. 38, Ch. 93, L. 1969; amd. Sec. 34, Ch. 13, L. 1977; amd. Sec. 13, Ch. 343, L. 1977; R.C.M. 1947, 82-1519.

80-2-203. Participation in program — tax. (1) Any taxpayers or associations of taxpayers engaged in the growing of crops other than specified herein or other agricultural or horticultural products subject to injury or destruction by hail may, by their individual or joint election filed with and approved by the board of hail insurance, accept the provisions of this part and elect to become subject thereto, and in such event such risks may be classified by the board and suitable levies imposed as may be agreed upon by the board and such taxpayers, whereupon such taxpayers shall be entitled to the benefits and protection afforded by the insurance provisions of this part.

(2) Every farmer taxpayer who signifies his desire to become subject to the provisions of this part shall file in the office of the county assessor the properly filled out form not later than August 15 and shall be chargeable with the tax hereinafter provided for on lands growing crops subject to injury or destruction by hail and shall share in the protection and benefits under the hail insurance provisions of this part. Such application for hail insurance shall be in full force and effect at noon the day following the acceptance of the same by the county assessor.

(3) This part shall not be so construed as to empower anyone except the actual owner of the land to make such land subject to the hail tax provided in this part.

History: (1)En. Sec. 11, Ch. 169, L. 1917; re-en. Sec. 362, R.C.M. 1921; re-en. Sec. 362, R.C.M. 1935; Sec. 82-1518, R.C.M. 1947; (2), (3)En. Sec. 1, Ch. 169, L. 1917; amd. Sec. 1, Ch. 17, Ex. L. 1918; amd. Sec. 1, Ch. 141, L. 1921; re-en. Sec. 350, R.C.M. 1921; amd. Sec. 1, Ch. 40, L. 1923; re-en. Sec. 350, R.C.M. 1935; amd. Sec. 58, Ch. 391, L. 1973; amd. Sec. 140, Ch. 218, L. 1974; amd. Sec. 2, Ch. 468, L. 1977; Sec. 82-1501, R.C.M. 1947; R.C.M. 1947, 82-1501(3), 82-1518.

80-2-204. Duty of agent of the department of revenue — election of benefits of law. It shall be the duty of the agent of the department of revenue in each county in the state, at the time in which the annual assessment of property is made, to explain to each taxpayer engaged in the growing of crops subject to injury or destruction by hail the provisions of this part and the protection afforded thereby and to request each such taxpayer to certify, on the forms provided for such purpose, if such taxpayer desires to become subject to this part and liable for the tax levies provided hereby and thereby eligible to the benefits and protection of this part. Each such taxpayer who elects to become subject to this part shall be liable for the taxes levied for hail insurance and shall participate in the benefits and protection afforded by this part, provided that the owners of lands worked by others under lease or contract shall elect if such lands shall be subject to the tax levies herein provided for and the crops grown thereon protected for hail insurance, or the lessee of such land may tender payment of the tax levied for hail insurance to protect his crops, in cash, to the officer authorized to receive same, whereupon such crops shall become eligible to the benefits and protection afforded by this part for hail insurance.

History: En. Sec. 5, Ch. 169, L. 1917; re-en. Sec. 356, R.C.M. 1921; re-en. Sec. 356, R.C.M. 1935; amd. Sec. 60, Ch. 391, L. 1973; R.C.M. 1947, 82-1512.

80-2-205. What crops subject to provisions of law. The crops grown on the lands of all taxpayers who shall elect to become subject to this part shall be insured under the provisions of this part for the acreage and the kind of crop for which taxes for hail insurance will have been levied, which insurance shall be provided for, determined, and adjusted and paid for as provided by this part.

History: En. Sec. 6, Ch. 169, L. 1917; re-en. Sec. 357, R.C.M. 1921; re-en. Sec. 357, R.C.M. 1935; R.C.M. 1947, 82-1513.

80-2-206. Cash payment. When an applicant for hail insurance tenders cash for the same to the county assessor, he shall be allowed a discount of 4%. His hail insurance shall be issued upon said cash payment less the 4% mentioned. The charge for the insurance shall be based on the maximum rates shown on the application for hail insurance. If the current rates are reduced later, the board of hail insurance shall arrange for the proper refund to the insured. All cash received by the assessor shall be promptly turned over to the county treasurer who will furnish the insured with a current receipt and place the money in the hail insurance fund.

History: En. Sec. 3, Ch. 40, L. 1923; amd. Sec. 3, Ch. 54, L. 1931; re-en. Sec. 350.2, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1943; R.C.M. 1947, 82-1503(2).

80-2-207. Delinquent taxes — application by delinquent — crop lien. (1) No owner of land who has more than 1 year's delinquent taxes on his land shall be allowed hail insurance under the provisions of this part, unless his application is accompanied by a cash payment for the amount that would be due on said application in the event of a maximum levy for that year.

(2) Any grain grower unable to secure state hail insurance under the provisions of this part on account of delinquent taxes or for other reasons may make application to the county assessor of his respective county and said county assessor is hereby authorized to receive and accept such applications where the applicant furnishes a sufficient crop lien subject only to a seed lien, provided that such crop lien shall be accepted only under such rules and requirements as may be prescribed by the board of hail insurance

and provided that the board may cancel any hail insurance accepted in violation of said rules and requirements. Upon receipt of said application, the county assessor shall make record thereof and shall file the original in the office of the clerk and recorder of said county. He shall also cause an assessment for the proper amount to be made on the assessment rolls in the same manner provided for in the case of other special levies or assessments.

(3) No tenant who has delinquent hail insurance which was secured by a crop lien only and not secured by real estate shall be allowed another policy in any succeeding year until he pays his delinquent account or accounts or until he pays cash for the current hail insurance.

(4) If any tenant becomes delinquent for his hail insurance after having failed to apply for relief as provided by the board under 80-2-229, he may apply to the board for a reduction. If his reasons for requesting a reduction are approved by the board, the board may reduce his charge to not less than one-half the original amount charged.

History: (1) thru (3)En. Sec. 3, Ch. 40, L. 1923; amd. Sec. 3, Ch. 54, L. 1931; re-en. Sec. 350.2, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1943; Sec. 82-1503, R.C.M. 1947; (4)En. Sec. 3, Ch. 169, L. 1917; amd. Sec. 4, Ch. 34, L. 1919; re-en. Sec. 354, R.C.M. 1921; amd. Sec. 6, Ch. 40, L. 1923; re-en. Sec. 354, R.C.M. 1935; amd. Sec. 2, Ch. 37, L. 1943; Sec. 82-1509, R.C.M. 1947; R.C.M. 1947, 82-1503(1), (3), 82-1509(part).

80-2-208. Maximum insurance. When the reserve fund is determined actuarially sound, as provided in 80-2-228, the board may write not more than $24 insurance on each acre of grain which is on nonirrigated land and not more than $48 per acre on irrigated land. When more than one party desires hail insurance on the same crop, each party is entitled to the share of the maximum provided per acre as represented by his interest in the crop. Either party may insure his share in the crop for any amount up to and including the maximum per acre if the others waive their right to insure.

History: En. Sec. 2, Ch. 40, L. 1923; re-en. Sec. 350.1, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1949; amd. Sec. 1, Ch. 200, L. 1953; amd. Sec. 1, Ch. 154, L. 1975; amd. Sec. 31, Ch. 13, L. 1977; R.C.M. 1947, 82-1502.

80-2-209. Reinsurance. Because of the unusual or unexpected variation in the severity of damage to grain crops which occur from year to year and in order to enable the hail insurance board to spread the effect of these variations more evenly over all years, the board is hereby authorized to negotiate for and to secure reinsurance of a part of the risk in any year when the need of such reinsurance appears advisable to the board. The board is hereby authorized to use moneys from hail insurance levies for the purchase of such reinsurance whenever it appears to the board that such reinsurance is necessary and advisable.

History: En. Sec. 3, Ch. 37, L. 1943; amd. Sec. 74, Ch. 147, L. 1963; R.C.M. 1947, 82-1505.

80-2-210 through 80-2-220 reserved.

80-2-221. Tax for hail insurance — limitation on levy. (1) A tax is hereby authorized and directed to be levied on all lands in this state growing crops subject to injury or destruction by hail, the owners of which have elected to become subject to the provisions of this part.

(2) The board of hail insurance shall annually estimate, as accurately as possible, the amount required to pay all losses, interest on warrants, and

costs of administration and shall recommend a levy to be made on each kind of land respectively, subject to the provisions of this part, to the department of revenue. The rates recommended to apply on the lands of owners shall be applied in the same proportions to the crops of those insured on a personal assessment basis.

(3) It is hereby provided, however, that such tax may not exceed in any one year $2.40 per acre on lands sown to grain crops on nonirrigated lands, $4.80 per acre on irrigated lands, or $2.40 per acre on lands producing hay crops.

(4) If the tax required to pay the estimated losses, interest on warrants, and costs of administration is less than $1.20 per acre on lands sown to grain crops on nonirrigated lands and $2.40 per acre on irrigated lands and a proportionate amount on lands sown to hay crops, the board of hail insurance must recommend a tax levy sufficient to raise the full amount thereof.

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(1); amd. Sec. 1, Ch. 20, L. 1979.

80-2-222. Board to establish amount of levy — disposition of funds. (1) The board of hail insurance may, when it considers it advisable, establish as many districts as it considers advisable and may maintain maximum rates in various parts of the state, which rates shall be commensurate with the risk incurred as nearly as it can determine from past experiences or from any records available. The highest of these rates shall be the same as the maximum established herein and the lowest may not be less than $1.20 per acre on lands sown to grain crops and a proportionate amount on lands sown to hay crops.

(2) Notice of the various rates established for any year shall be plainly printed on the application for hail insurance, and in any year when the requirements of the hail insurance law as herein provided do not require a levy of the maximum rates as established, then the rates for the year shall be determined and levied by the board of hail insurance for each of the various districts as established, in such proportions as will in its judgment be fair and equitable.

(3) In making the levy provided in this section and 80-2-223, the board of hail insurance shall provide for:

(a) the payment of all expenses of administration, together with all interest owed or to be owing on registered warrants;

(b) that portion of the losses incurred during the current year which are not paid from funds drawn from the reserve;

(c) the maintenance of the reserve, a part or all of which may be used in any one year for the purpose of paying the costs of administration, interest on the warrants, and losses as the same shall be settled and adjusted by the board, including the losses sustained in any prior year or years under the hail insurance law during or subsequent to the year 1919 that have not been paid.

(4) If at the end of any hail insurance season the board determines and finds that more funds are accumulating from the current year's levies than were estimated when the levy was made and are in excess of the need for the payment of losses and expenses and maintenance of the reserve, the

board may, at its discretion, refund the excess to the farmers insured for the year, on a pro rata or percentage basis.

(5) The board of hail insurance may direct the board of investments to invest funds from the agency fund pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the board of hail insurance account in the agency fund.

History: (1), (2)En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; Sec. 82-1506, R.C.M. 1947; (3) thru (5)En. Sec. 2, Ch. 34, L. 1919; re-en. Sec. 352, R.C.M. 1921; amd. Sec. 5, Ch. 40, L. 1923; amd. Sec. 1, Ch. 8, L. 1929; re-en. Sec. 352, R.C.M. 1935; amd. Sec. 3, Ch. 200, L. 1953; amd. Sec. 1, Ch. 20, L. 1957; amd. Sec. 73, Ch. 147, L. 1963; amd. Sec. 3, Ch. 154, L. 1975; amd. Sec. 3, Ch. 16, L. 1977; Sec. 82-1507, R.C.M. 1947; R.C.M. 1947, 82-1506(4), (5), 82-1507(1), (2), (7).

80-2-223. Levy by department of revenue. The department of revenue shall prescribe such levies annually to be made against lands growing crops subject to injury or destruction by hail which are subject to this part in accordance with the recommendation of the board of hail insurance.

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(part).

80-2-224. Assessment — notice — when payable. Notice of such assessment shall be mailed by the county treasurer to each person insured in the same manner as are all other notices of taxes due. The assessment shall be payable at the office of the county teasurer of each respective county.

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(part).

80-2-225. Real estate lien — creation. Such tax levies are chargeable to the lands of each taxpayer, respectively, who elects to become subject to this part and shall be extended on the tax roll and collected by the officers charged with such duties in the manner and form as are other property taxes and if not paid shall be a lien on the lands against which the same are levied as are other property taxes. The lien may in no way affect mortgages that are of record on March 14, 1917. The lien of any mortgage filed subsequent to March 14, 1917, shall be subsequent to any lien for hail insurance hereafter levied thereon.

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(part).

80-2-226. Crop lien — when created — assessment. (1) In addition to the lien created in 80-2-225 on the land of the insured, the levy for such hail insurance shall constitute a lien on the crops insured with the exception that the crop lien may not apply to owners of unencumbered land or to the land or crops of those who pay cash for hail insurance. The applications of these persons may not be filed with the county clerk and recorded as provided for in 80-2-207. The crop lien shall be included in all applications for hail insurance, with the above exceptions, and shall be enforced as provided in 80-2-230 and 80-2-231 against all insured except those owning unencumbered land or those who have paid cash for hail insurance.

(2) All applicants securing hail insurance on crop liens as heretofore provided shall be subject to the same charges per acre as provided herein to be made on land.

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(part).

80-2-227. Hail insurance secured by crop lien only. When any hail insurance issued under this part is secured by a crop lien only said crop lien is hereby declared a first lien on the insured crop, except only any crop lien which may have been given to secure the purchase price for the seed which was bought and used to plant and produce the insured grain.

History: En. Sec. 3, Ch. 37, L. 1943; R.C.M. 1947, 82-1504.

80-2-228. Reserve fund. (1) Each year when the hail board makes its annual levy for the payment of current losses, expenses of administration, and for an addition to the reserve if conditions permit, it may not increase the levy enough in any year so that such addition to the reserve will exceed 5% of the maximum risk written for that year.

(2) The reserve fund may not exceed $4 million prior to January 1, 1976. On January 1, 1976, and thereafter, the maximum permissible reserve fund shall be established as set forth in subsection (3) of this section.

(3) The board may engage the services of a qualified actuary to conduct an actuarial valuation of the reserve. This valuation shall include the actuary's determination of the amount of reserve necessary to absorb all reasonably anticipated catastrophic losses. This amount shall be the maximum permissible reserve fund for the next year.

(4) The reserve hereby created shall be deposited in the agency fund, and the board is hereby granted the power to draw from its moneys in the fund such amounts as it considers necessary for the purpose of paying costs of administration, interest, and losses.

(5) Whenever there are no unpaid losses for prior years and whenever in any one year the cost of administration, interest, and losses for the current year is less than the sum of 60 cents per acre on nonirrigated grains and a proportionate amount on irrigated grains and other crops, the board may not draw on the reserve for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration, exceeds the amount of the estimate made by the board.

History: En. Sec. 2, Ch. 34, L. 1919; re-en. Sec. 352, R.C.M. 1921; amd. Sec. 5, Ch. 40, L. 1923; amd. Sec. 1, Ch. 8, L. 1929; re-en. Sec. 352, R.C.M. 1935; amd. Sec. 3, Ch. 200, L. 1953; amd. Sec. 1, Ch. 20, L. 1957; amd. Sec. 73, Ch. 147, L. 1963; amd. Sec. 3, Ch. 154, L. 1975; amd. Sec. 3, Ch. 16, L. 1977; R.C.M. 1947, 82-1507(3) thru (6).

80-2-229. Withdrawal of crop in case of destruction through other means. When any crop insured under this part shall have been destroyed by any other cause than hail, the applicant may, by furnishing the proof required by the board of hail insurance, cause the crop to be withdrawn from the regular levy of the board for the current year. Such proof shall be submitted to the board of hail insurance in accordance with its rules. Said rules shall be plainly printed on the applications and policies issued by the department. They shall provide that the cost for such withdrawn insurance shall be varied as nearly as practical according to the time the insurance is in force and according to the risk carried.

History: En. Sec. 3, Ch. 34, L. 1919; amd. Sec. 3, Ch. 141, L. 1921; re-en. Sec. 353, R.C.M. 1921; amd. Sec. 2, Ch. 54, L. 1931; re-en. Sec. 353, R.C.M. 1935; R.C.M. 1947, 82-1508.

80-2-230. Collection of levies — release of lien. (1) The county treasurer in each county in the state shall collect all levies made under this part in the same manner as other property taxes are collected and shall keep all moneys collected by him or for him for hail insurance in a separate fund to be known as the hail insurance fund and remit the same to the state treasurer in the same manner as provided by law for the remittance of other moneys due to the state. All county treasurers shall use due diligence in making the collections of the levies provided herein. Also the board may furnish assistance needed at any time in making collections or may take over the collection of any levy at any time, depositing any collections therefrom with the treasurer of the county where the levy therefor was made.

(2) All insurance levies, whether levied against land or in the form of special assessments secured by crop liens, shall be payable in full and not in semiannual payments on or before November 30 of each year in which such levies are made.

(3) Whenever the amount due on any hail insurance secured by a crop lien is paid, the treasurer shall promptly endorse on the lien on file in the office of the county clerk and recorder the amount paid thereon with the date of payment and such endorsement shall be a satisfaction and release of such lien.

History: (1), (3)En. Sec, 3, Ch. 169, L. 1917; amd. Sec. 4, Ch. 34, L. 1919; re-en. Sec. 354, R.C.M. 1921; amd. Sec. 6, Ch. 40, L. 1923; re-en. Sec. 354, R.C.M. 1935; amd. Sec. 2, Ch. 37, L. 1943; Sec. 82-1509, R.C.M. 1947; (2)En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; Sec. 82-1506, R.C.M. 1947; R.C.M. 1947, 82-1506(part), 82-1509(part).

80-2-231. Foreclosure of lien. If the person receiving hail insurance secured by a crop lien fails to pay said insurance to the county treasurer by December 1 of the year in which the crop so insured is grown, the county treasurer shall on that day or as soon as possible thereafter deliver to the sheriff of said county a full, true, and correct copy of the lien on file in the office of the clerk and recorder and such sheriff must immediately demand from the person or persons signing such lien payment of the amount due thereon and, if the same is not paid to the sheriff upon such demand being made, the sheriff must forthwith seize and sell in the manner provided by law for the sale of personal property under execution a sufficient amount of grain belonging to such person to pay the amount due for hail insurance together with interest and costs and expenses of seizure and sale.

History: En. Sec. 7, Ch. 40, L. 1923; re-en. Sec. 354.1, R.C.M. 1935; amd. Sec. 3, Ch. 33, L. 1949; R.C.M. 1947, 82-1510.

80-2-232. State treasurer's duty — transfer of funds — warrants — transfers to county and state general fund. (1) The state treasurer shall receive all moneys paid to him under this part and shall place same to the credit of the agency fund and may from time to time transfer to the earmarked revenue fund such sums as the board of hail insurance may deem necessary and proper to pay the expenses of administration. All moneys collected by the board shall be deposited in the agency fund, and all losses shall be paid from that fund. All other costs are administrative expenses and shall be paid from the board's account in the earmarked revenue fund. If registered warrants be presented and there be no money to pay the same, such warrants shall be registered and thereafter bear interest at the rate of 4% per annum until called for payment by the state treasurer. If at any time more funds are in the earmarked revenue fund than the board estimates are needed for administrative expenses, the state treasurer may on the order of the board transfer such funds back to the agency fund as the board may direct.

(2) Upon warrants drawn by order of the board, the state treasurer shall pay out of the board's account in the agency fund to the county treasurer of each county where state hail insurance coverage is in force 1% of the gross annual levies made and collected in such county under this part for the use of the county as the board of county commissioners may determine.

(3) Upon authorization from the board of hail insurance, the state treasurer shall transfer out of the board's account in the agency fund to the general fund of the state of Montana 2% of the gross annual levies made and collected in the state of Montana.

History: En. Sec. 4, Ch. 169, L. 1917; amd. Sec. 1, Ch. 183, L. 1921; re-en. Sec. 355, R.C.M. 1921; amd. Sec. 8, Ch. 40, L. 1923; re-en. Sec. 355, R.C.M. 1935; amd. Sec. 1, Ch. 189, L. 1961; amd. Sec. 75, Ch. 147, L. 1963; R.C.M. 1947, 82-1511.

80-2-233 through 80-2-240 reserved.

80-2-241. Report of losses. All losses by hail to crops insured under this part shall be reported within 3 days thereafter by the owner of such crops, his agent or attorney, to the board of hail insurance, which shall require the claimant to make a statement of the losses sustained, the cause thereof, and such other information as the board may require on the forms to be provided for such purpose.

History: En. Sec. 7, Ch. 169, L. 1917; re-en. Sec. 358, R.C.M. 1921; amd. Sec. 9, Ch. 40, L. 1923; re-en. Sec. 358, R.C.M. 1935; R.C.M. 1947, 82-1514.

80-2-242. Appraisers — appointment — qualifications — duties. (1) The board of hail insurance shall as soon as practicable each year appoint a sufficient number of appraisers to appraise all losses by hail incurred under this part in the various counties. The men so appointed shall be actively engaged in farming or shall have had practical experience in farming and shall be selected from names submitted by regularly organized farmers societies in the various counties. If the recommendations are not made as provided above, then the board shall select the appraisers from men actively engaged in farming or men who have had practical experience in farming as heretofore provided.

(2) The board may call on one or more of the duly appointed appraisers for the adjustment of each and every loss, and the said appraisers shall promptly report their findings to the board according to the rules provided by the board.

(3) No appraiser who shall be a relative, attorney, agent, employee, or creditor or in any manner interested by lien, mortgage, or otherwise in the crop injured or destroyed shall assist in adjusting any such loss.

(4) The board may in case of emergency appoint more than three appraisers in any county. Also it may send any duly appointed appraiser or appraisers into any county as the occasion may require.

History: **En. Sec. 8, Ch. 169, L. 1917; amd. Sec. 5, Ch. 34, L. 1919; amd. Sec. 4, Ch. 141, L. 1921; re-en. Sec. 359, R.C.M. 1921; re-en. Sec. 359, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1973; R.C.M. 1947, 82-1515.**

80-2-243. Disputed appraisal. (1) In case the party that has sustained the loss is dissatisfied with and refuses to accept the adjustment made by the official appraiser, then he shall have the right to appeal to the board of hail insurance. He shall make such appeal by registered or certified mail within 10 days after receiving the adjustment offer of the board in writing. Also the board may require the posting of a cash bond of $10 with the request for reappraisal of the first adjustment. In cases where the board requires the posting of the $10 bond, the board may retain it if no increase is allowed. If an increase is obtained, the board will return the bond to the claimant.

(2) In case the adjuster who makes the second appraisal fails to secure an agreement, the claimant may at his option submit the matter to arbitration as herein provided or sue the board in the district court of the county where the loss occurred, within 90 days from the date of receipt of written notice of the second appraisal. Such actions shall be trials de novo and the Montana Rules of Civil Procedure shall apply. Where any claimant demands arbitration, he shall, if required by the board, furnish a cash bond to the board in the sum of $25 which shall accompany his application. If there is not sufficient allowance made to any claimant after arbitration to cover the cost of arbitration without the use of the $25 bond, then the board may use a part or all of said cash bond. In cases where the claimant secures an increase, the bond shall be promptly returned to the claimant. If the claimant elects to submit the matter to arbitration, he shall then appoint one disinterested person as appraiser and the official appraiser shall appoint another person as appraiser and the two shall select a third disinterested person and the three shall then proceed to adjust the loss in the same manner as specified in 80-2-242. The judgment of the majority shall be the judgment of said appraisers and shall be binding upon both parties as the final determination of said loss.

(3) (a) If the insured does not recover a greater sum than allowed by the official appraiser in the first instance, he shall pay the expenses of the three appraisers and their witnesses in making said adjustment, but if he is awarded a larger sum, then the same shall be paid by the board.

(b) If the insured shall be required to pay the expenses of such reappraisement as above provided, the board is hereby authorized to deduct the amount of such expenses from the amount allowed said insured before making settlement for said loss.

(4) The board shall examine all reports of appraisers and verify the same and adjust all losses and for such purposes may order hearings, subpoena witnesses, conduct examinations, and do all things necessary to secure a fair and impartial appraisement of losses by hail.

History: En. Sec. 9, Ch. 169, L. 1917; amd. Sec. 6, Ch. 34, L. 1919; re-en. Sec. 360, R.C.M. 1921; amd. Sec. 10, Ch. 40, L. 1923; re-en. Sec. 360, R.C.M. 1935; amd. Sec. 4, Ch. 33, L. 1949; amd. Sec. 1, Ch. 69, L. 1963; amd. Sec. 76, Ch. 147, L. 1963; amd. Sec. 1, Ch. 170, L. 1967; R.C.M. 1947, 82-1516.

80-2-244. Payment of losses. (1) The board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of the loss in the following manner. From the amount of the loss as adjusted for each claimant, the board shall deduct the amount the claimant then owes as delinquent hail insurance tax and the maximum amount assessed as hail insurance tax for the current year and shall make settlement within 40 days from the time loss is sustained by paying, either by registered warrant or otherwise if funds are immediately available, 50% of the total loss as agreed upon, less the maximum rate of assessment. The balance shall be paid at the expiration of the hail season.

(2) The board shall on or before November 1 order payment for the amount so deducted, which payment shall be remitted to the county treasurer of the county in which the tax was assessed. The board shall then order payment for the balance of the adjustment to be sent to the claimant, provided that in no case may the payment for loss exceed $24 per acre for grain crops on nonirrigated lands, $48 per acre on irrigated lands, and $24 per acre on hay crops. No claimant may receive payment for any loss incurred where the loss does not equal or exceed 5% of the total value of the crop insured. If the losses in any year exceed the current levy plus the reserve, if any, then the payment of all losses shall be prorated, share and share alike, among all grain growers having loss claims adjusted and approved, and the unpaid balance of the losses shall be paid out of the reserve without interest in such order as the board directs, when in the judgment of the board there are sufficient moneys to provide for the payment of the same and other items payable out of the reserve. In any year the board may by resolution authorize its chairman and secretary to borrow as needed from any person, bank, or corporation such sum or sums of money as the board may consider necessary for the purpose of paying all warrants as issued.

(3) For any moneys borrowed under the provisions of this part, the board shall cause warrants to be drawn. The warrants shall bear interest at not to exceed 6% a year, and the warrants and the interest thereon shall be paid out of funds from the state hail insurance program as they are collected from the various counties in the state. The board may not at any time borrow a total sum greater than the amount of levies as made for taxes for the current year together with such delinquent taxes as remain unpaid on the books of the county treasurer.

History: En. Sec. 10, Ch. 169, L. 1917; amd. Sec. 7, Ch. 34, L. 1919; amd. Sec. 5, Ch. 141, L. 1921; re-en. Sec. 361, R.C.M. 1921; amd. Sec. 11, Ch. 40, L. 1923; amd. Sec. 2, Ch. 8, L. 1929; re-en. Sec. 361, R.C.M. 1935; amd. Sec. 5, Ch. 33, L. 1949; amd. Sec. 4, Ch. 200, L. 1953; amd. Sec. 77, Ch. 147, L. 1963; amd. Sec. 4, Ch. 154, L. 1975; amd. Sec. 33, Ch. 13, L. 1977; R.C.M. 1947, 82-1517.

80-2-245. Benefits exempt from execution. All money or benefits received from hail insurance are exempt from execution, are not liable to attachment, and may not be seized, taken, or appropriated by any local process to pay any debt or liability of the insured unless the amount is assigned and then for no more than the amount of the claim intended to be secured by the assignment, with lawful interest.

History: **En. Sec. 13, Ch. 40, L. 1923; re-en. Sec. 363.1, R.C.M. 1935; R.C.M. 1947, 82-1520; amd. Sec. 2, Ch. 20, L. 1979.**

CHAPTER 3

HORTICULTURE STANDARDS, STORAGE, AND MERCHANDISING

Part 1 — Standard Grades and Brands

Section

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Part 1

Standard Grades and Brands

80-3-101. Definitions. (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Container" or "package" means cloth or fiber sack, barrel, box, crate, carton, hamper, or basket customarily used for the shipment of Montana farm products and other farm products.

(b) "Montana farm products" means all products of the farm grown commercially in Montana or elsewhere and intended for table use such as potatoes, cherries, and dry beans.

(c) "Other farm products" means all farm products which are not normally grown commercially in Montana such as grapefruit and oranges.

(d) "Person" as used herein shall mean any grower, dealer, shipper, society, association, organization, corporation, or their agents or representatives.

(2) The terms defined in subsections (1)(b) and (1)(c) do not include livestock and its byproducts, poultry and its products, apiary products, dairy products, grain, or apples.

History: En. Sec. 2, Ch. 165, L. 1933; re-en. Sec. 3633.2, R.C.M. 1935; amd. Sec. 2, Ch. 79, L. 1969; amd. Sec. 74, Ch. 218, L. 1974; R.C.M. 1947, 3-1402.

80-3-102. Purpose. The intent and purpose of this part is to regulate the sale of Montana farm products and other farm products for table use intended for interstate or intrastate commerce when such is made by the grower, dealer, distributor, or any other person either by wholesale or retail or in any other manner; provided, however, that the provisions of this part shall not apply to the grower in the sale of the Montana farm products and other farm products grown by himself or to small retail packages.

History: En. Sec. 9, Ch. 165, L. 1933; re-en. Sec. 3633.9, R.C.M. 1935; amd. Sec. 8, Ch. 79, L. 1969; R.C.M. 1947, 3-1409.

80-3-103. Standard grades for farm products. The standard grades for Montana farm products and other farm products shall be limited to the United States grades covering the same products and shall conform in all respects and be identical with the latest standards established by the United States secretary of agriculture for the various commodities and, thus conforming, shall be accepted as the legal standards for the state of Montana. The United States commercial grade is a standard grade in this state.

History: Ap. p. Sec. 1, Ch. 165, L. 1933; re-en. Sec. 3633.1, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1969; Sec. 3-1401, R.C.M. 1947; Ap. p. Sec. 4, Ch. 165, L. 1933; re-en. Sec. 3633.4, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1937; amd. Sec. 1, Ch. 30, L. 1963; amd. Sec. 4, Ch. 79, L. 1969; amd. Sec. 76, Ch. 218, L. 1974; Sec. 3-1404, R.C.M. 1947; R.C.M. 1947, 3-1401, 3-1404(6).

80-3-104. Department to establish standard grades — notice required. (1) The department of agriculture shall establish United States standard grades on potatoes, dry beans, and cherries and shall, as soon as any Montana farm product or other farm product reaches a volume rendering it of market importance, establish United States grades on that product.

(2) The grades become effective 30 days after publication in the Montana administrative register. The department shall publish notice of the establishment of the standards two times in at least three papers of general circulation within the state.

History: En. Sec. 3, Ch. 165, L. 1933; re-en. Sec. 3633.3, R.C.M. 1935; amd. Sec. 3, Ch. 79, L. 1969; amd. Sec. 75, Ch. 218, L. 1974; R.C.M. 1947, 3-1403.

80-3-105. Grading and branding of products required — labeling of culls. (1) A person may not pack for sale, expose for sale, sell, transport, deliver, consign, or possess for sale, transport, delivery, or consignment in interstate or intrastate commerce Montana farm products and other farm products prepared for market which are not graded and branded to meet the requirement of the grade declared. The grade declared shall conform to the provisions of this part.

(2) Other farm products, which includes products arriving or found in Montana in containers not graded and branded, must meet the requirements of United States No. 1 grade or better. Those products which do not grade United States No. 1 or better must be labeled or tagged with proper grade according to Montana inspection.

(3) Montana farm products and other farm products not conforming to established grades may be sold if labeled, tagged, or branded in the same manner as graded products, except that in place of specifying the grade, the word "culls" or "unclassified" shall be used. All products branded "unclassified" must contain at least 50% of products which would grade United States No. 2 or better.

(4) Montana farm products and other farm products for seed purposes may be sold when graded under rules approved by the department of agriculture and plainly labeled, tagged, or branded "for seed purposes".

(5) Oranges labeled "choice" shall meet the requirements of the United States No. 2 grade or better for oranges.

History: En. Sec. 4, Ch. 165, L. 1933; re-en. Sec. 3633.4, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1937; amd. Sec. 1, Ch. 30, L. 1963; amd. Sec. 4, Ch. 79, L. 1969; amd. Sec. 76, Ch. 218, L. 1974; R.C.M. 1947, 3-1404(1) thru (5), (7).

80-3-106. Unlawful to sell or transport products unless labeled, tagged, or branded — use of tags. (1) It is unlawful for any person, firm, association, organization, or corporation or agent, representative, or assistant to any person, firm, association, organization, or corporation to expose for sale or sell, transport, deliver, consign, or have in possession Montana farm products and other farm products prepared for market unless each container has been legibly and conspicuously tagged, branded, labeled, or stenciled before being moved from the premises of the person responsible for the grading and packing, to indicate the name of the grade, when applicable, together with the true net contents expressed in weight.

(2) When tags are used, United States No. 1 grade shall be declared on a white tag and United States No. 2 grade shall be declared on a red tag. Bulk shipments shall be accompanied by two cards not less than 4 x 6 inches in size placed on the inside of the car near each door. Likewise cards in size herein described shall be prominently placed on all bulk shipments made by truck or other conveyance. Upon each card shall appear the name and address of the consignor, the name of the grade, if applicable, the name of the loading station, the date of loading, and the name and address of the consignee, if known. It shall be conclusive evidence that the farm products are considered for sale when the containers are packed for delivery or transit, are exposed for sale, are in process of delivery or transit, or are located at a depot, station, boat dock, or any place where farm products or other products are held for storage or for immediate or future sale or transit.

History: En. Sec. 5, Ch. 165, L. 1933; re-en. Sec. 3633.5, R.C.M. 1935; amd. Sec. 5, Ch. 79, L. 1969; amd. Sec. 16, Ch. 13, L. 1977; R.C.M. 1947, 3-1405.

80-3-107. Grade of agricultural products to be stated in advertisements. All advertised prices on agricultural products on which grades have been established by law in this state, whether in newspapers, circulars, bills, placards, signs, or in any other manner, shall in addition to the price quoted show the true grade of the product as provided by law. Price tags exhibited in a place of business upon exposed products shall not be considered advertising under the provisions of this part.

History: En. Sec. 1, Ch. 46, L. 1935; re-en. Sec. 3633.11, R.C.M. 1935; R.C.M. 1947, 3-1411.

80-3-108. Inspection of condition of products in storage or transit. Montana farm products and other farm products held in storage or in transit which at the time of inspection show deterioration or decay but otherwise conform to the grade shall be inspected as to condition and not as to grade.

History: En. Sec. 6, Ch. 165, L. 1933; re-en. Sec. 3633.6, R.C.M. 1935; amd. Sec. 6, Ch. 79, L. 1969; amd. Sec. 17, Ch. 13, L. 1977; R.C.M. 1947, 3-1406.

80-3-109. Entry and inspection by department. The department may enter upon premises where Montana farm products and other farm products are graded, packed, or stored to inspect them as to grade, pack, and condition.

History: En. Sec. 7, Ch. 165, L. 1933; re-en. Sec. 3633.7, R.C.M. 1935; amd. Sec. 7, Ch. 79, L. 1969; amd. Sec. 77, Ch. 218, L. 1974; R.C.M. 1947, 3-1407.

80-3-110. Rules for enforcement — fees. The department may adopt rules necessary for the enforcement of this [act]. The department may adopt rules to establish fees for inspection under this [act].

History: En. Sec. 8, Ch. 165, L. 1933; re-en. Sec. 3633.8, R.C.M. 1935; amd. Sec. 78, Ch. 218, L. 1974; amd. Sec. 3, Ch. 155, L. 1975; R.C.M. 1947, 3-1408.

80-3-111. Violations — penalties. (1) A person who violates this part by not grading Montana farm products and other farm products or by not tagging or branding containers or by removing or altering any tag or brand placed upon or attached to any container, unless ordered to do so by the department, is guilty of a misdemeanor. He shall be fined not less than $10 or more than $100 or imprisoned in the county jail not less than 30 days or more than 3 months or both fined and imprisoned.

(2) Any person, firm, or corporation failing to comply with 80-3-107 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $10 or more than $25.

History: (1)En. Sec. 10, Ch. 165, L. 1933; re-en. Sec. 3633.10, R.C.M. 1935; amd. Sec. 9, Ch. 79, L. 1969; amd. Sec. 79, Ch. 218, L. 1974; Sec. 3-1410, R.C.M. 1947; (2)En. Sec. 2, Ch. 46, L. 1935; re-en. Sec. 3633.12, R.C.M. 1935; Sec. 3-1412, R.C.M. 1947; R.C.M. 1947, 3-1410, 3-1412.

Part 2

Apples — Inspection, Grading, and Packing

80-3-201. Inspection of apples packed for sale. (1) The department of agriculture shall inspect all apples packed for sale or shipment under this part.

(2) The department may:

(a) certify to the grade and pack of apples packed for sale or shipped under this part and charge the owner, packer, or shipper a fee fixed by the department for these services;

(b) adopt rules regarding inspection and certification of apples under this part.

History: En. Sec. 55, Ch. 216, L. 1921; re-en. Sec. 3630, R.C.M. 1921; re-en. Sec. 3630, R.C.M. 1935; Sec. 3-1305, R.C.M. 1947; amd. and redes. 3-3401 by Sec. 70, Ch. 218, L. 1974; R.C.M. 1947, 3-3401.

80-3-202. Grades of apples. (1) The standard grades of apples for the state of Montana shall be:

(a) "extra fancy or first grade", which shall consist of apples of one variety which are mature, handpicked, clean, well formed, sound, free from bruises, limb rubs, spray burns, sunburn, russeting, drought spot, hail marks, visible water core, broken skin, apple scab, stings, and from diseases and insect injury, except that slight blemishes shall be permitted in this grade;

(b) "fancy or second grade", which shall consist of apples of one variety which are mature, handpicked, clean, fairly well formed, sound, free from visible water core, broken skin, and from damage caused by bruises, limb rub, spray burns, sunburn, russeting, drought spot, hail marks, apple scabs, diseases and insect injury;

(c) "C grade", which shall consist of apples of one variety which are mature, handpicked, clean, not badly misshapen, sound, free from broken skin and from serious damage caused by bruises, limb rub, russeting, drought spot, hail marks, apple scab, diseases, and insect injury and must have 15% of color requirements characteristic of the variety. The word "choice" must not be used in connection with this grade.

(d) "cull grade", which shall consist of apples free from infection or disease or serious damage but which do not meet the requirements of "extra fancy or first grade", "fancy or second grade", or "C grade". Such apples shall be marked "culls" in block letters not less than 1 inch in height on both ends of the box.

(e) "combination grade". When "extra fancy or first grade" and "fancy or second grade" apples are packed together, the boxes must be marked "combination extra fancy or first grade and fancy or second grade". This combination grade must contain at least 25% of apples which belong to the higher grade in the combination.

(f) "hail grade", which shall meet all requirements of "extra fancy" and "fancy grade" except for hail marks. Such hail marks must not materially deform or disfigure the fruit or affect more than one-tenth of the surface in the aggregate where skin has not been broken. Unhealed hail marks shall not be permitted and not more than an aggregate area of one-half inch shall be allowed for well-healed hail marks where the skin has been broken.

(g) "orchard-run grade", which shall consist of apples of one variety, which are mature, handpicked, clean, sound, free from infection or disease or serious damage, and must have 15% color requirements characteristic of the variety and shall be marked "orchard-run grade" in block letters not less than 1 inch in height on both ends of the box.

(2) No apples smaller than 2 ¼ inches in diameter shall be permitted in any grade. Small apples which are under size requirements as prescribed may be shipped if marked "small" in block letters not less than 1 inch in height on both ends of the box, provided such apples are free from insect pests and diseases.

(3) In order to provide for variations incident to commercial grading and handling, a tolerance of 10% for a total of all defects from the standard of the grade shall be allowed.

History: En. Sec. 1, Ch. 138, L. 1931; amd. Sec. 1, Ch. 1, L. 1933; amd. Sec. 1, Ch. 39, L. 1935; re-en. Sec. 4265.1, R.C.M. 1935; amd. Sec. 1, Ch. 89, L. 1939; amd. Sec. 1, Ch. 43, L. 1951; amd. Sec. 1, Ch. 127, L. 1971; Sec. 90-201, R.C.M. 1947; amd. and redes. 3-3402 by Sec. 172, Ch. 218, L. 1974; amd. Sec. 26, Ch. 13, L. 1977; R.C.M. 1947, 3-3402.

80-3-203. Marking of apple containers. Any box, barrel, crate, or carton used in packing apples for sale shall be marked or branded in plain, legible letters on one end with:

(1) the name of grower, person, or firm responsible for pack and the locality where grown or packed;

(2) the name of the variety;

(3) the grade contained therein, which must comply with the provisions of this part;

(4) the approximate number of apples contained therein or the net weight of contents.

History: En. Sec. 2, Ch. 138, L. 1931; re-en. Sec. 4265.2, R.C.M. 1935; Sec. 90-202, R.C.M. 1947; redes. 3-3403 by Sec. 172, Ch. 218, L. 1974; R.C.M. 1947, 3-3403.

80-3-204. Designation of grade of bulk apples. Apples shipped or sold in bulk shall have two cards at least 10 by 12 inches in size attached to the doors of the car or on each side of the truck in which they are moved. The cards shall designate grade of the apples contained in the car or truck as specified in 80-3-202 and shall be in legible printed letters at least 2 inches in height.

History: En. Sec. 3, Ch. 138, L. 1931; amd. Sec. 2, Ch. 39, L. 1935; re-en. Sec. 4265.3, R.C.M. 1935; Sec. 90-203, R.C.M. 1947; amd. and redes. 3-3404 by Sec. 171, Ch. 218, L. 1974; R.C.M. 1947, 3-3404.

80-3-205. Standard size of apple box. There is hereby created and established a standard size for apple boxes for the state of Montana. The standard size of an apple box shall be of the following dimensions when measured without distention of its parts: depth of end, 10 ½ inches; width of end, 11 ½ inches; length of box, 18 inches inside measurements; and representing as nearly as possible 2,173 ½ cubic inches.

History: En. Sec. 4, Ch. 138, L. 1931; re-en. Sec. 4265.4, R.C.M. 1935; Sec. 90-204, R.C.M. 1947; redes. 3-3405 by Sec. 172, Ch. 218, L. 1974; R.C.M. 1947, 3-3405.

80-3-206. Short boxes to be marked. Any box in which apples shall be packed and offered for sale that contains less than the required number of cubic inches, as prescribed in 80-3-205, shall be plainly marked on one side and one end with the words "short box", or with the words or figures showing the practical relation which the actual capacity of the box bears to the capacity required by 80-3-205. The marking required by this paragraph shall be in block letters of not less than one-half inch in size.

History: En. Sec. 5, Ch. 138, L. 1931; re-en. Sec. 4265.5, R.C.M. 1935; Sec. 90-205, R.C.M. 1947; redes. 3-3406 by Sec. 172, Ch. 218, L. 1974; R.C.M. 1947, 3-3406.

80-3-207. Penalty for violation. No person, firm, company, or corporation shall sell or offer for sale or shipment within or without the state of Montana apples branded or packed in containers in violation of the provisions of this part. Any person, firm, company, or corporation who shall knowingly sell apples or offer apples for sale or shipment within or without the state of Montana in violation of the provisions of this part shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than $10 or more than $50.

History: En. Sec. 6, Ch. 138, L. 1931; amd. Sec. 3, Ch. 39, L. 1935; re-en. Sec. 4265.6, R.C.M. 1935; Sec. 90-206, R.C.M. 1947; redes. 3-3407 by Sec. 172, Ch. 218, L. 1974; R.C.M. 1947, 3-3407.

Parts 3 and 4 reserved

Part 5

Bean Storage

80-3-501. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "Beans" means all varieties of the bean family (except green beans) whether grown or purchased for seed, feed, or human consumption.

(2) "Storage" or "warehousing" means any method by which beans are held for any party, other than direct ownership, by the party storing the beans.

(3) "Warehouseman" means a dealer, shipper (except grower), society, association, organization, corporation, or their agents or representatives.

History: En. Sec. 2, Ch. 164, L. 1935; re-en. Sec. 3592.55, R.C.M. 1935; amd. Sec. 32, Ch. 218, L. 1974; R.C.M. 1947, 3-702; amd. Sec. 3, Ch. 20, L. 1979.

80-3-502. Application. This part shall cover all transactions in beans, and they shall not be handled, purchased, sold, or stored under the provisions of any grain law.

History: En. Sec. 3, Ch. 164, L. 1935; re-en. Sec. 3592.56, R.C.M. 1935; R.C.M. 1947, 3-703.

80-3-503. License required of persons warehousing beans — fee — disposal of moneys — expiration date. A person in the business of buying and selling at wholesale or warehousing and storing beans or receiving or soliciting beans for purchase, sale, or storage, within or outside this state shall, before engaging in the business, obtain a license from the department of agriculture and pay a license fee of $20 to the department. The license fee shall be deposited with the state treasurer and credited to the general fund. Licenses shall be renewed annually and the prescribed fee paid annually. All licenses shall be issued for the fiscal year ending June 30 or a fraction of the fiscal year.

History: En. Sec. 4, Ch. 164, L. 1935; re-en. Sec. 3592.57, R.C.M. 1935; amd. Sec. 32, Ch. 147, L. 1963; amd. Sec. 33, Ch. 218, L. 1974; R.C.M. 1947, 3-704; amd. Sec. 1, Ch. 300, L. 1979.

80-3-504. Form of application for license — qualifications — appeal on refusal. The department shall prescribe forms for application for licenses and shall require from the applicant the information it considers necessary. The applicant must satisfy the department as to his qualifications, warehouse and storage facilities, experience, and financial ability to carry on the business of buying, selling, warehousing, and storing. Upon furnishing the evidence, the department shall grant or refuse a license. If a license is refused by the department, appeal may be made in accordance with 80-3-605 and 80-3-609.

History: En. Sec. 5, Ch. 164, L. 1935; re-en. Sec. 3592.58, R.C.M. 1935; amd. Sec. 34, Ch. 218, L. 1974; R.C.M. 1947, 3-705.

80-3-505. Bond of applicant — conditions — fire insurance. A person applying for a license to engage in the business of buying, selling, warehousing, or storing beans in accordance with this part shall file with the department a surety bond of $5,000. The bond shall be executed by a responsible surety company licensed to do business in this state and shall be approved by the department. The bond shall be conditioned upon the faithful performance of the applicant's obligations as a bean dealer or warehouseman under the laws of this state and of additional obligations assumed by him under contract with the respective depositors of the beans with him. The department may require additional bond under penalty of revoking the license. The bond shall be in a form and shall contain additional conditions as the department may prescribe to carry out the purposes of this part, and the bond may, in the discretion of the department, include any required fire insurance.

History: En. Sec. 6, Ch. 164, L. 1935; re-en. Sec. 3592.59, R.C.M. 1935; amd. Sec. 35, Ch. 218, L. 1974; R.C.M. 1947, 3-706.

80-3-506. Suit on bond. Any person injured by the breach of any obligation, to secure which a bond is given as provided in this part, shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained in such breach, or where more than one person has been so injured, the action may be brought in the name of the state of Montana on behalf of all such injured persons.

History: En. Sec. 7, Ch. 164, L. 1935; re-en. Sec. 3592.60, R.C.M. 1935; R.C.M. 1947, 3-707.

80-3-507. Fee for inspecting warehouse. The department shall charge a reasonable fee, not in excess of $10 a year, for every examination or inspection of a warehouse under this part. The fee shall be paid to the department and deposited as provided in 80-3-503.

History: En. Sec. 8, Ch. 164, L. 1935; re-en. Sec. 3592.61, R.C.M. 1935; amd. Sec. 36, Ch. 218, L. 1974; R.C.M. 1947, 3-708.

80-3-508. Records of bean dealer — inspection — receipt. (1) A dealer in beans shall keep a complete record of all beans handled by him on a form prescribed by the department. The record shall be open to the confidential inspection of the department at all times.

(2) Every warehouseman shall issue a receipt for all beans received for storage on a form approved by the department.

(3) A person operating under this part shall keep in a place of safety complete records of all beans stored by him, all beans withdrawn from storage, all warehouse receipts issued by him, and all the receipts returned to and canceled by him and shall report to the department as required by the rules of the department.

History: En. Secs. 9, 13, Ch. 164, L. 1935; re-en. Secs. 3592.62, 3592.66, R.C.M. 1935; amd. Secs. 37, 40, Ch. 218, L. 1974; R.C.M. 1947, 3-709, 3-713; amd. Sec. 4, Ch. 20, L. 1979.

80-3-509. Rules to be adopted by department. The department shall adopt rules it considers necessary for the safe conduct of the business referred to in this part, including a scale of storage charges and warehouse receipts. The department may require reports from any warehouseman or person receiving stored beans on forms prepared by the department.

History: En. Sec. 10, Ch. 164, L. 1935; re-en. Sec. 3592.63, R.C.M. 1935; amd. Sec. 38, Ch. 218, L. 1974; amd. Sec. 8, Ch. 13, L. 1977; R.C.M. 1947, 3-710.

80-3-510. Grading before storing required — specification on receipt. All beans accepted for storage shall first be graded according to the standards of the United States department of agriculture, and the grade so established shall be noted and specified upon the warehouse receipt issued for such beans.

History: En. Sec. 11, Ch. 164, L. 1935; re-en. Sec. 3592.64, R.C.M. 1935; R.C.M. 1947, 3-711.

80-3-511. Storage constitutes bailment — duty to keep beans in storage. The storage of beans under this part constitutes a bailment, and upon the return of the warehouse receipt properly endorsed and upon the payment or tender of all advances and legal charges, the holder of the warehouse receipt is entitled to and the warehouseman shall deliver the identical grade and amount of beans placed in storage. A dealer under this part shall maintain at all times in original storage beans equal in amount and grade to all warehouse receipts issued, unless authorized in writing by holders of receipts or by the department to move to other storage. Failure to maintain the proper amount of beans is a conversion.

History: **En. Sec. 12, Ch. 164, L. 1935; re-en. Sec. 3592.65, R.C.M. 1935; amd. Sec. 39, Ch. 218, L. 1974; amd. Sec. 9, Ch. 13, L. 1977; R.C.M. 1947, 3-712.**

80-3-512. Enforcement — investigations — hearings — orders of department — appeals. (1) To enforce this part, the department may upon its own motion or shall upon verified complaint against any dealer or any person assuming or attempting to act as a dealer make all necessary investigations. The department shall at all times have free access to all buildings, yards, warehouses, storage and transportation or other facilities or places in which beans are kept, stored, handled, or transported. If the department, upon investigation, believes that a dealer is not acting in accordance with this part or if a verified complaint is filed against a dealer, the department shall personally serve on the dealer or shall mail by registered or certified mail a complaint or a copy of the verified complaint. If the dealer fails to make formal adjustment or settlement of the charges to the satisfaction of the department, the department shall hold a formal hearing. Notice of the hearing shall be given at least 20 days before the hearing. The hearing shall be held in the city or town in which the transaction complained of is alleged to have occurred.

(2) Copies of records, inspection certificates, certified reports, and all papers on file with the department are prima facie evidence of the matters contained in them.

(3) After the hearing the department shall dismiss the charges, suspend the license of the dealer for a specified time, revoke the license, or make any other appropriate order considered just and proper. An order shall specify its effective date, and any order other than one suspending or revoking a license automatically suspends the license until the order is complied with. An appeal may be made from the decision of the department under 80-3-605 and 80-3-609.

History: **En. Sec. 14, Ch. 164, L. 1935; re-en. Sec. 3592.67, R.C.M. 1935; amd. Sec. 41, Ch. 218, L. 1974; R.C.M. 1947, 3-714.**

80-3-513. Penalties for doing business without license and other violations. Any person who engages in or carries on any business or occupation for which a license is required by this part without first having obtained a license therefor or who continues to engage in or carry on any such business or occupation after such license has been revoked or expired is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than $100, and each day that such business or occupation is so carried on or engaged in is a separate offense. Any person who otherwise violates any of the provisions of this part or by any manner or means converts to his own use or that of another any beans so stored or accepted for storage, if the value of such converted beans exceeds $500, is guilty of a felony or, if the value is less than $500, is guilty of a misdemeanor and in either case upon conviction shall be punished by fine or imprisonment, or both, as otherwise provided by law.

History: En. Sec. 15, Ch. 164, L. 1935; re-en. Sec. 3592.68, R.C.M. 1935; R.C.M. 1947, 3-715; amd. Sec. 5, Ch. 20, L. 1979.

Part 6

Produce Wholesalers

80-3-601. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Dealer at wholesale" means a person who buys to sell at wholesale or contracts to buy to sell at wholesale or who handles at wholesale on account of or as agent for another.

(2) "Person" means an individual, group of persons, exchange, firm, partnership, corporation, or association.

(3) "Produce" means the natural products of the farm and includes but is not limited to natural products of the orchard, vineyard, garden, and apiary, raw and manufactured (except grains, dairy products, livestock, poultry, and poultry products), when handled for the purpose of resale.

History: En. Sec. 3, Ch. 164, L. 1933; re-en. Sec. 2443.3, R.C.M. 1935; Sec. 84-3403, R.C.M. 1947; amd. and redes. 3-3301 by Sec. 160, Ch. 218, L. 1974; R.C.M. 1947, 3-3301.

80-3-602. Produce wholesaler's license — exemptions. A person may not engage in or purport to be engaged in the business of a dealer at wholesale unless he is licensed by the department of agriculture. This part does not apply to a farmer or gardener selling his own products and who shall when called upon to do so by the department furnish a sworn statement that the goods handled by him were actually grown by him. Employees of the department may for the purpose of this section administer the oath. Also, this part does not apply to a trucker operating for hire under a license issued by the public service commission and not buying or selling produce to a dealer at retail or to a consumer or group of consumers cooperatively obtaining produce for their own use only and not for resale.

History: En. Sec. 2, Ch. 164, L. 1933; amd. Sec. 1, Ch. 173, L. 1935; re-en. Sec. 2443.2, R.C.M. 1935; Sec. 84-3402, R.C.M. 1947; amd. and redes. 3-3302 by Sec. 159, Ch. 218, L. 1974; R.C.M. 1947, 3-3302.

80-3-603. Application for license — bond — expiration date. (1) Licenses to engage in the business of a dealer at wholesale in this state shall be issued by the department to reputable persons who apply for a license and pay the prescribed fee.

(2) The application shall be in writing, accompanied by the prescribed fee, and under oath. It shall state:

(a) the place where the applicant intends to carry on the business for which the license is desired;

(b) the estimated amount of business to be done monthly;

(c) the full names of the persons constituting the firm, if the applicant is a partnership;

(d) the names of the officers and the place of incorporation, if the applicant is a corporation; and

(e) a financial statement showing in a general way the value and character of the assets and the amount of liabilities of the applicant.

(3) Before issuing a license, the department shall require the applicant to file with it a bond to the state in an amount to be fixed by the department based on the monthly business to be transacted by the applicant. The bond may not be for less than $1,000. The department may require, under penalty of revoking the license, additional bond if the business transacted warrants an increase. The bond shall cover all wholesale produce business transacted in this state. The bond shall be executed by the applicant as principal and a surety company authorized to do business in the state as surety. The form of the bond shall be fixed by the department, conditioned upon:

(a) faithful performance of his duties as a dealer at wholesale;

(b) observance of all laws relating to the business of a dealer at wholesale;

(c) payment, when due, of the purchase price of produce purchased by him;

(d) the prompt reporting of sales as required by law to all persons consigning produce to the dealer as licensee for sale on commission; and

(e) the prompt payment to persons entitled to the proceeds of the sales less lawful charges, disbursements, and commissions.

(4) All licenses expire December 31 of each year. The license or a certified copy of the license shall be kept posted in the office of the licensee at each place in this state where he transacts business. The fee for each license is $100 and for each certified copy of a license, $1. If a truck is the place of business, the license fee for the first truck is $100 and for each additional truck, $50.

(5) A separate license is required for each place of business. Each truck used for assembling and distributing produce, other than from a permanently established place of business through which all business of sales and accounts is handled, is a separate place of business and must be licensed.

History: En. Sec. 4, Ch. 164, L. 1933; amd. Sec. 2, Ch. 173, L. 1935; re-en. Sec. 2443.4, R.C.M. 1935; Sec. 84-3404, R.C.M. 1947; amd. and redes. 3-3303 by Sec. 161, Ch. 218, L. 1974; amd. Sec. 24, Ch. 13, L. 1977; R.C.M. 1947, 3-3303(1) thru (4), (6).

80-3-604. Schedule of commissions and charges to be filed. The applicant shall file with the department a schedule of his commissions and charges for services in connection with produce handling on account of or as agent for another.

History: En. Sec. 4, Ch. 164, L. 1933; amd. Sec. 2, Ch. 173, L. 1935; re-en. Sec. 2443.4, R.C.M. 1935; Sec. 84-3404, R.C.M. 1947; amd. and redes. 3-3303 by Sec. 161, Ch. 218, L. 1974; amd. Sec. 24, Ch. 13, L. 1977; R.C.M. 1947, 3-3303(5).

80-3-605. Investigation of applicant — hearings — grant or denial of license. The department shall examine each application and investigate the applicant and his business, business rating, character, and reputation. If from the examination and investigation the department determines that the applicant is in the matter of his business, business rating, character, and reputation not properly qualified to engage in business as a dealer, it shall refuse to grant a license and shall deny the application and notify the applicant in writing of its decision. An applicant whose application is denied by the department may, within 10 days after the mailing of notice of rejection, petition the department for a hearing. The department shall afford the applicant an opportunity for a hearing on a date not less than 10 or more than 20 days after the receipt of the petition. A person who has objected to the licensing of the applicant shall be given at least 10 days' notice of the hearing by mail. After the hearing, the department shall grant or deny the application.

History: En. Sec. 5, Ch. 164, L. 1933; re-en. Sec. 2443.5, R.C.M. 1935; Sec. 84-3405, R.C.M. 1947; amd. and redes. 3-3304 by Sec. 162, Ch. 218, L. 1974; R.C.M. 1947, 3-3304.

80-3-606. Records to be kept — contents. (1) Every dealer in produce shall keep a complete record of all produce handled by him. The record shall include:

(a) the name and address of the producer or shipper;
(b) the date of receipt of each consignment;
(c) the kind and quantity of produce received;
(d) the agreed purchase price or commission charged;
(e) date of sale;
(f) price at which sold;
(g) the name of the person, firm, or corporation to whom sold;
(h) an itemized statement of charges to be paid by the producer in connection with the sale.

(2) The record shall be open for confidential inspection by the department.

History: En. Sec. 6, Ch. 164, L. 1933; re-en. Sec. 2443.6, R.C.M. 1935; Sec. 84-3406, R.C.M. 1947; amd. and redes. 3-3305 by Sec. 163, Ch. 218, L. 1974; R.C.M. 1947, 3-3305.

80-3-607. Inspection and report concerning produce. When a dealer at wholesale, to whom produce has been shipped, is consigned for sale on a commission basis, or is on consignment or has been shipped under any circumstances in which the title to the produce remains with the shipper, has received the produce, he shall within a reasonable time make a written report to the shipper. The report shall include the exact time of arrival and the quantity and quality of the produce. If the produce is received in a decayed or damaged condition noticeable upon arrival, the dealer shall have the common carrier or the department make proper record certifying the condition. The dealer shall notify the consignor promptly so that the consignor can take further action to verify the report.

History: En. Sec. 7, Ch. 164, L. 1933; re-en. Sec. 2443.7, R.C.M. 1935; Sec. 84-3407, R.C.M. 1947; amd. and redes. 3-3306 by Sec. 164, Ch. 218, L. 1974; R.C.M. 1947, 3-3306.

80-3-608. Enforcement — hearings. (1) The department upon its own motion may or, upon verified complaint against any dealer or any person, firm, exchange, association, or corporation assuming or attempting to act as such, shall make all investigations it considers necessary. The department shall have at all times free and unimpeded access to all buildings, yards, warehouses, storage, and transportation or any other facilities or places in which any produce is kept, stored, handled, or transported. If the department, upon investigation, believes that a dealer is not acting in accordance with this part or if a verified complaint is filed against any dealer, the department shall have personal service made on the dealer or shall mail by registered mail a complaint or a copy of the verified complaint against the dealer. If dealer fails to make informal adjustment or settlement of the charges to the satisfaction of the department, the department shall give notice of the time and place of a formal hearing. Notice of the hearing shall be given at least 20 days before the hearing and the hearing shall be held in the city or town in which the transaction complained of is alleged to have occurred.

(2) At the hearing, copies of records, inspection certificates, certified reports, and all papers on file in the office of the department are prima facie evidence of the matters contained in them.

(3) After the hearing, the department shall dismiss the charges, suspend the license of the dealer for a specified period, revoke the licenses, or make any other appropriate order considered just and proper. The order shall specify its effective date and any order other than one suspending or revoking a license shall automatically suspend the license until the order is complied with.

History: En. Sec. 8, Ch. 164, L. 1933; re-en. Sec. 2443.8, R.C.M. 1935; Sec. 84-3408, R.C.M. 1947; amd. and redes. 3-3307 by Sec. 165, Ch. 218, L. 1974; R.C.M. 1947, 3-3307.

80-3-609. Effect of appeal to district court. If the revocation of the license of a produce dealer is appealed to a district court, the license remains in force until the final determination by the court. A license may not be refused during the time or on account of the pendency of any review proceedings.

History: En. Sec. 10, Ch. 164, L. 1933; re-en. Sec. 2443.10, R.C.M. 1935; Sec. 84-3410, R.C.M. 1947; amd. and redes. 3-3308 by Sec. 166, Ch. 218, L. 1974; R.C.M. 1947, 3-3308.

80-3-610. Rules for enforcement of part. The department shall adopt rules for carrying out and enforcing this part.

History: En. Sec. 13, Ch. 164, L. 1933; re-en. Sec. 2443.13, R.C.M. 1935; Sec. 84-3413, R.C.M. 1947; amd. and redes. 3-3309 by Sec. 167, Ch. 218, L. 1974; R.C.M. 1947, 3-3309.

80-3-611. Cooperation with similar agencies. The department shall cooperate with the United States department of agriculture and with other federal authorities and with the state and municipal authorities of this and other states and shall perform those other acts necessary in carrying out this part.

History: En. Sec. 14, Ch. 164, L. 1933; re-en. Sec. 2443.14, R.C.M. 1935; Sec. 84-3414, R.C.M. 1947; amd. and redes. 3-3310 by Sec. 168, Ch. 218, L. 1974; R.C.M. 1947, 3-3310.

80-3-612. Disposition of license fees. All license fees received by the department under this part shall be paid into the state treasury and deposited in the general fund.

History: En. Sec. 15, Ch. 164, L. 1933; re-en. Sec. 2443.15, R.C.M. 1935; Sec. 84-3415, R.C.M. 1947; amd. and redes. 3-3311 by Sec. 169, Ch. 218, L. 1974; amd. Sec. 5, Ch. 155, L. 1975; R.C.M. 1947, 3-3311.

80-3-613. Violation — penalty. A person who violates this part, fails to comply with rules adopted under this part, or fails to obey an order of the department made under this part is guilty of a misdemeanor and shall be fined not less than $25 or more than $500, imprisoned in the county jail for not more than 6 months, or both fined and imprisoned. The fine shall be paid into the state treasury and deposited as provided in 80-3-612.

History: En. Sec. 18, Ch. 164, L. 1933; amd. Sec. 3, Ch. 173, L. 1935; re-en. Sec. 2443.16, R.C.M. 1935; Sec. 84-3416, R.C.M. 1947; amd. and redes. 3-3312 by Sec. 170, Ch. 218, L. 1974; amd. Sec. 25, Ch. 13, L. 1977; R.C.M. 1974, 3-3312.

Part 7

Itinerant Merchants

80-3-701. Definitions. For the purpose of this part, the following definitions apply:

(1) "Itinerant merchant" means a person who buys, offers to buy, sells, or offers to sell in this state, at wholesale or retail, any produce as defined by 80-3-601, who does not hold a license under the provisions of part 6 of this chapter and transports the produce in this state by use of a motor vehicle or by any other method of transportation, except as otherwise provided, or who has not secured a permit of exemption. The term "itinerant merchant" does not include the following:

(a) a person using a motor vehicle owned by him, whether operated by him or his agent, for the transportation of produce produced by him on owned or leased premises when the entire course of the transportation extends not more than 150 miles from his residence, whether the residence is within or outside this state;

(b) a person handling produce grown by him who has secured from the department of agriculture, before offering the produce for sale, a permit of exemption. The permit shall be issued by the department upon application and payment of a fee of $1. The applicant must first be able to satisfactorily show that he will sell or offer for sale only produce of his own production. The permit shall allow only the sale of produce of his own production and is forfeited if the holder sells or offers to sell any produce not of his own production.

(c) a person transporting property owned by him in a motor vehicle owned by him, whether operated by him or his agent, when the transportation is incident to a business conducted by him at an established place of business operated by him, either within or outside this state, and when the property is being transported to or from an established place of business operated by him in this state;

(d) a person transporting property for his own consumption or use and not for sale.

(2) "Established place of business" means a permanent warehouse, building, or structure in which a permanent business is carried on in good faith and not for the purpose of evading this part and in which stocks of the property being transported are produced, stored, or kept in quantities reasonably adequate for and usually carried for the requirements of the business and which is recognized, licensed, and taxed as a permanent business at the place. The term does not mean residences, tents, temporary stands or other temporary quarters, a railway car, or permanent quarters occupied under a temporary arrangement.

History: (1)Ap. p. Sec. 1, Ch. 214, L. 1939; Sec. 84-3001, R.C.M. 1947; amd. and redes. 3-3201 by Sec. 144, Ch. 218, L. 1974; amd. Sec. 4, Ch. 155, L. 1975; Sec. 3-3201, R.C.M. 1947; Ap. p. Sec.

3, Ch. 214, L. 1939; Sec. 84-3003, R.C.M. 1947; amd. and redes. 3-3203 by Sec. 146, Ch. 218, L. 1974; Sec. 3-3203, R.C.M. 1947; (2)En. Sec. 2, Ch. 214, L. 1939; Sec. 84-3002, R.C.M. 1947; amd. and redes. 3-3202 by Sec. 145, Ch. 218, L. 1974; Sec. 3-3202, R.C.M. 1947; R.C.M. 1947, 3-3201, 3-3202, 3-3203.

80-3-702. Exemptions — affidavit. No person is exempt from this part unless he or the driver of the motor vehicle upon which his property is being transported, upon the request of a peace officer or person charged with the enforcement of this part, executes an affidavit containing those facts the department requires and delivers the affidavit to the peace officer or person. The affidavit must clearly show that the person claiming the exemption is entitled to one or more of the exemptions provided in this part.

History: En. Sec. 4, Ch. 214, L. 1939; Sec. 84-3004, R.C.M. 1947; amd. and redes. 3-3204 by Sec. 147, Ch. 218, L. 1974; R.C.M. 1947, 3-3204.

80-3-703. License required. A person may not engage in business as an itinerant merchant without obtaining a license from the department.

History: En. Sec. 5, Ch. 214, L. 1939; Sec. 84-3005, R.C.M. 1947; amd. and redes. 3-3205 by Sec. 148, Ch. 218, L. 1974; R.C.M. 1947, 3-3205.

80-3-704. Application for license — fee. (1) An application for a license to engage in business as an itinerant merchant shall be made to the department upon forms prepared by it.

(2) A separate application and license is required for each motor vehicle to be operated. The application shall contain those facts the department requires. The fee for each license is $100 for the calendar year in which it is issued, and each license expires December 31 of the calendar year in which issued. The proper fee shall accompany the application. The application shall be signed and sworn to by the applicant.

History: En. Sec. 6, Ch. 214, L. 1939; Sec. 84-3006, R.C.M. 1947; amd. and redes. 3-3206 by Sec. 149, Ch. 218, L. 1974; R.C.M. 1947, 3-3206.

80-3-705. Surety bond. A license may not be issued until the applicant has filed a surety bond issued by a company authorized to do business in the state. The bond must first be approved by the department and shall be for not less than $1,000. The bond shall be in a form prescribed by the department and shall be conditioned upon the delivery of honest weights, measures, or grades; accurate representation as to quality or class of produce; the actual payment of checks, drafts, or other obligations delivered by the itinerant merchant in exchange for the purchase of produce; and the payment of all other obligations incurred by him.

History: En. Sec. 7, Ch. 214, L. 1939; Sec. 84-3007, R.C.M. 1947; amd. and redes. 3-3207 by Sec. 150, Ch. 218, L. 1974; R.C.M. 1947, 3-3207.

80-3-706. License — issuance, form, and display of. Upon approval of the application and bond and upon compliance with this part, the department shall issue the applicant an itinerant merchant's license in a form prescribed by the department. The license shall at all times be carried by the driver of the motor vehicle described and is at all times subject to inspection by any person.

History: En. Sec. 8, Ch. 214, L. 1939; Sec. 84-3008, R.C.M. 1947; amd. and redes. 3-3208 by Sec. 151, Ch. 218, L. 1974; R.C.M. 1947, 3-3208.

80-3-707. License nontransferable. A license issued under this part may not be sold or transferred, and a license may not be transferred from one vehicle to another without the written consent of the department.

History: En. Sec. 9, Ch. 214, L. 1939; Sec. 84-3009, R.C.M. 1947; amd. and redes. 3-3209 by Sec. 152, Ch. 218, L. 1974; R.C.M. 1947, 3-3209.

80-3-708. Revocation of license. After a hearing the department may revoke a license issued under this part for failure to comply with any law.

History: En. Sec. 10, Ch. 214, L. 1939; Sec. 84-3010, R.C.M. 1947; amd. and redes. 3-3210 by Sec. 153, Ch. 218, L. 1974; R.C.M. 1947, 3-3210.

80-3-709. Administrative rules. The department shall adopt and enforce necessary and proper rules for the administration of this part.

History: En. Sec. 11, Ch. 214, L. 1939; Sec. 84-3011, R.C.M. 1947; amd. and redes. 3-3211 by Sec. 154, Ch. 218, L. 1974; R.C.M. 1947, 3-3211.

80-3-710. Offending vehicle to be kept in custody. A motor vehicle operated in violation of this part shall be kept in the custody of a law enforcement officer or person authorized to enforce this part and may not be operated except under its authority and solely for the purpose of taking it to the nearest convenient place of custody until this part has been complied with.

History: En. Sec. 12, Ch. 214, L. 1939; Sec. 84-3012, R.C.M. 1947; amd. and redes. 3-3212 by Sec. 155, Ch. 218, L. 1974; R.C.M. 1947, 3-3212.

80-3-711. Disposition of license fees. All license fees received under this part by the department shall be deposited with the state treasurer and shall be used to defray the cost of administration and enforcement of this part.

History: En. Sec. 13, Ch. 214, L. 1939; Sec. 84-3013, R.C.M. 1947; amd. and redes. 3-3213 by Sec. 156, Ch. 218, L. 1974; R.C.M. 1947, 3-3213.

80-3-712. Construction. Nothing in this part repeals or amends any statute delegating authority to any county or municipal corporation to license, tax, or regulate peddlers or itinerant merchants. This part does not repeal or amend any of the provisions of part 2 of this chapter.

History: En. Sec. 14, Ch. 214, L. 1939; Sec. 84-3014, R.C.M. 1947; amd. and redes. 3-3214 by Sec. 157, Ch. 218, L. 1974; R.C.M. 1947, 3-3214.

80-3-713. Penalty. A person violating this part is guilty of a misdemeanor and shall be fined not less than $25 or more than $200.

History: En. Sec. 15, Ch. 214, L. 1939; Sec. 84-3015, R.C.M. 1947; amd. and redes. 3-3215 by Sec. 158, Ch. 218, L. 1974; R.C.M. 1947, 3-3215.

CHAPTER 4

GRAIN
STANDARDS, STORAGE, AND MERCHANDISING

Part 1 — Grain Standards

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Part 1

Grain Standards

80-4-101. Definitions. (1) The word "grain" includes flax.

(2) The term "public warehouse" includes any elevator, mill, warehouse, or structure in which grain is received from the public for storage, milling, shipment, or handling.

(3) The term "public warehouseman" includes every person, association, firm, and corporation owning, controlling, or operating any public warehouse in which grain is stored or handled in such a manner that the grain of various owners is mixed together and the identity of the different lots or parcels is not preserved.

History: En. Sec. 20, Ch. 216, L. 1921; re-en. Sec. 3574, R.C.M. 1921; amd. Sec. 1, Ch. 41, L. 1923; amd. Sec. 1, Ch. 154, L. 1929; amd. Sec. 1, Ch. 35, L. 1933; re-en. Sec. 3574, R.C.M. 1935; amd. Sec. 1, Ch. 224, L. 1961; amd. Sec. 1, Ch. 13, L. 1977; R.C.M. 1947, 3-201(1) thru (3).

80-4-102. Grain inspectors, samplers, and weighers — qualifications — interest. (1) The department shall provide inspectors, samplers, and weighers to enforce this chapter. At all inspection points designated by the department, the department shall provide sufficient inspectors and weighers to inspect and weigh all grain subject to state inspection under the supervision of the department. However, grain held in transit for inspection and diversion only need not be weighed.

(2) The department shall, during the grain-marketing season, appoint inspectors to visit the grain-growing districts for the purpose of investigating grain grading, dockage, and weighing and enforcing the rules of the department.

History: (1)En. Sec. 22, Ch. 216, L. 1921; re-en. Sec. 3576, R.C.M. 1921; amd. Sec. 2, Ch. 154, L. 1929; re-en. Sec. 3576, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1957; amd. Sec. 10, Ch. 177, L. 1965; amd. Sec. 9, Ch. 218, L. 1974; amd. Sec. 2, Ch. 13, L. 1977; Sec. 3-205, R.C.M. 1947; (2)En. Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R.C.M. 1921; re-en. Sec. 3580, R.C.M. 1935; amd. Sec. 14, Ch. 218, L. 1974; Sec. 3-211, R.C.M. 1947; R.C.M. 1947, 3-205(part), 3-211.

80-4-103. Qualifications of inspectors. Inspectors shall be able to qualify under the terms and in accordance with the United States Grain Standards Act. Inspectors, samplers, and weighers may not be interested directly or indirectly in the handling, sorting, shipping, purchasing, or selling of grain or grain products.

History: En. Sec. 22, Ch. 216, L. 1921; re-en. Sec. 3576, R.C.M. 1921; amd. Sec. 2, Ch. 154, L. 1929; re-en. Sec. 3576, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1957; amd. Sec. 10, Ch. 177, L. 1965; amd. Sec. 9, Ch. 218, L. 1974; amd. Sec. 2, Ch. 13, L. 1977; R.C.M. 1947, 3-205(part).

80-4-104. Licensing grain weighers — penalty for violation. The department may require persons, firms, corporations, or warehousemen engaged in weighing grain in this state to obtain a license and may adopt rules governing the application for and the issuance of the licenses. A fee may not be charged for a license. A person, firm, corporation, or warehouseman who weighs grain without first obtaining a license is guilty of a misdemeanor and shall be fined not less than $25 or more than $200.

History: En. Sec. 36, Ch. 216, L. 1921; re-en. Sec. 3592, R.C.M. 1921; re-en. Sec. 3592, R.C.M. 1935; amd. Sec. 27, Ch. 218, L. 1974; R.C.M. 1947, 3-232(4).

80-4-105. Designation of inspection points — assignment of inspectors. (1) Cities and towns where grain is received in carload lots may be designated by the department as inspection points and be provided with state inspection and weighing. Expenditures for the inspection and weighing at the points designated by the department may not exceed the receipts of fees at those points.

(2) The department may also assign inspectors to portions of the state it considers necessary. Inspectors shall inspect grain delivered in less than carload lots in the portions of the state to which they are assigned, shall furnish producers with an inspection which will enable them to determine the grade of their grain, and shall perform other duties the department prescribes.

History: En. Sec. 24, Ch. 216, L. 1921; re-en. Sec. 3578, R.C.M. 1921; re-en. Sec. 3578, R.C.M. 1935; amd. Sec. 10, Ch. 218, L. 1974; R.C.M. 1947, 3-207.

80-4-106. Penalty for misconduct. (1) Any inspector, sampler, or weigher who is guilty of any neglect of duty or who knowingly or carelessly inspects, samples, or weighs any grain or who, directly or indirectly, accepts any money or other consideration for any neglect of duty or any improper performance of duty as such inspector, sampler, or weigher or any person, persons, corporation, or agent who improperly influences or attempts to improperly influence any inspector, sampler, or weigher in the performance of his duties is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $500 or be imprisoned in the county jail not less than 30 days or more than 1 year or by both such fine and imprisonment, in the discretion of the court.

(2) Upon written complaint filed with the department, charging an inspector, sampler, or weigher with official misconduct, inefficiency, incompetency, or neglect of duty, the department shall investigate the charges. If the charges are substantiated, the department shall remove that officer.

History: (1)En. Sec. 23, Ch. 216, L. 1921; re-en. Sec. 3577, R.C.M. 1921; re-en. Sec. 3577, R.C.M. 1935; Sec. 3-206, R.C.M. 1947; (2)En. Sec. 29, Ch. 216, L. 1921; re-en. Sec. 3583, R.C.M. 1921; re-en. Sec. 3583, R.C.M. 1935; amd. Sec. 17, Ch. 218, L. 1974; Sec. 3-215, R.C.M. 1947; R.C.M. 1947, 3-206, 3-215; amd. Sec. 6, Ch. 20, L. 1979.

80-4-107 through 80-4-110 reserved.

80-4-111. Establishment of standard grain grades. (1) The department shall establish standard grades to apply to all grain bought or handled by public warehouses in this state. The department shall adopt as state grade standards all grades for grain established by the United States department of agriculture. Standards for grain shall be established by the department after notice and a public hearing. Notice shall be published in three newspapers of the state at least 20 days before the hearing.

(2) Grade standards, or any alteration or modification of those standards which the department may establish, are not effective until 30 days after publication, except for grades established by the United States department of agriculture, which are effective 10 days after publication.

(3) The grain standards adopted by the department do not apply to grain contracted for before their effective date.

History: En. Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R.C.M. 1921; re-en. Sec. 3580, R.C.M. 1935; amd. Sec. 12, Ch. 218, L. 1974; amd. Sec. 1, Ch. 43, L. 1977; R.C.M. 1947, 3-209.

80-4-112. Rules governing dockage — sample inspection. The department shall, after the hearing provided in 80-4-111, adopt rules governing the dockage which shall be made on inferior grades and in all executory contracts entered into after the hearing. The rules may not conflict with the terms of the United States Grain Standards Act. Where the price or amount to be paid depends on terminal weight or grade, the rules shall control the dockage insofar as it affects the price to be paid, and the rules become part of the contract of sale. The department shall also provide for sample inspection of grain, adopt rules governing sample inspections, and provide that the sample inspection when made is final.

History: En. Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R.C.M. 1921; re-en. Sec. 3580, R.C.M. 1935; amd. Sec. 13, Ch. 218, L. 1974; amd. Sec. 3, Ch. 13, L. 1977; R.C.M. 1947, 3-210.

80-4-113. Special inspection of grain. (1) If grain is sold for delivery on Montana grade to be shipped from places not provided with state inspection under this chapter, the buyer, seller, or person making the delivery may have it inspected by notifying an inspector who shall have the grain inspected and after inspection issue on request of the buyer, seller, or person delivering it an inspector's certificate showing the grade of the grain. The person or persons calling for the inspection shall pay a reasonable fee fixed by the department.

(2) Grain that is shipped to points in this state where no inspection is maintained may be inspected on request of either the buyer or seller, and a certificate may be issued showing the grade of the grain. The charge for the service shall at least equal the entire cost of it and shall be paid by the party calling for the inspection.

History: En. Sec. 34, Ch. 216, L. 1921; re-en. Sec. 3590, R.C.M. 1921; re-en. Sec. 3590, R.C.M. 1935; amd. Sec. 25, Ch. 218, L. 1974; R.C.M. 1947, 3-230.

80-4-114. Sampling grain. Samples may be drawn from all grain shipped to terminal warehouses and from all grain inspected or weighed. The samples are the property of the state, subject to disposition by the department, under rules prescribed by the department.

History: En. Sec. 35, Ch. 216, L. 1921; re-en. Sec. 3591, R.C.M. 1921; re-en. Sec. 3591, R.C.M. 1935; amd. Sec. 26, Ch. 218, L. 1974; R.C.M. 1947, 3-231.

80-4-115. Examination of grain cars at destination. (1) An inspector, sampler, or weigher, before opening the doors of a car containing grain, upon its arrival at any of the places designated by the department for inspection, shall first ascertain the condition of the car and determine whether any leakages have occurred while the car was in transit, shall determine whether the doors were properly secured and sealed at the point of shipment, and shall make a record of those facts in all cases, giving seal numbers.

(2) After examinations have been made, the state officials shall securely close and reseal doors opened by them, using the special seal of the department.

(3) A record of all original seals broken by those officials, the date when broken, and the number of the seals shall be made by them. An inspector, weigher, or sampler shall break the seal, weigh, and superintend the loading of all cars of grain subject to inspection. It is unlawful for any other person to break the seal or weigh the cars of grain.

History: En. Sec. 36, Ch. 216, L. 1921; re-en. Sec. 3592, R.C.M. 1921; re-en. Sec. 3592, R.C.M. 1935; amd. Sec. 27, Ch. 218, L. 1974; R.C.M. 1947, 3-232(1) thru (3).

80-4-116. Protein testing laboratory. (1) The department shall maintain a protein testing laboratory.

(2) No other laboratory may certify to the grade or protein content of grain unless the laboratory is licensed by the department under rules adopted by the department.

(3) The department shall, by rule, determine the standard of analysis controlling all other protein testing laboratories in this state.

(4) The department may, by rule, determine the form of protein certificates issued by it.

History: En. 3-232.1 by Sec. 28, Ch. 218, L. 1974; R.C.M. 1947, 3-232.1.

80-4-117. Protein test to be made of all wheat delivered to grain warehousemen — manner of making test — fee. (1) Each public warehouseman shall take a sample from each load of wheat delivered to his warehouse and preserve the sample in a moisture-proof container with the owner's name on it. As hauling is completed by each owner, the several samples taken from all the loads of that one owner shall be mixed thoroughly, except that high-, medium-, or low-protein wheat from the same owner or wheat of different types, varieties, or grades shall be segregated and separate containers provided for each. A 1-pint portion of the composite sample shall be submitted to the department and the balance shall be held in the owner's container. If either the warehouseman or owner is dissatisfied, he may appeal to the department.

(2) In case of an appeal a 1-pint portion of the remainder of the owner's sample shall again be submitted to the department with a statement of facts of the appeal and a final test in duplicate shall be made by the department. The department's certificate of the test is final and binding upon both parties in establishing the basis of the price paid by the warehouseman.

(3) A fee commensurate with the cost of each protein test shall be made, to be deducted and paid at the time of final settlement.

(4) Upon written request of the owner, no protein test need be made upon the owner's wheat.

History: En. Sec. 1, Ch. 160, L. 1935; re-en. Sec. 3592.42, R.C.M. 1935; amd. Sec. 1, Ch. 379, L. 1973; Sec. 3-512, R.C.M. 1947; amd. and redes. 3-232.2 by Sec. 30, Ch. 218, L. 1974; R.C.M. 1947, 3-232.2.

80-4-118. Penalty for violation. A person violating 80-4-117 is guilty of a misdemeanor and shall be fined not less than $300 or more than $500 for each offense.

History: En. Sec. 2, Ch. 160, L. 1935; re-en. Sec. 3592.43, R.C.M. 1935; Sec. 3-513, R.C.M. 1947; amd. and redes. 3-232.3 by Sec. 31, Ch. 218, L. 1974; R.C.M. 1947, 3-232.3.

80-4-119. Fees for inspection, testing, and weighing grain. (1) The department shall fix the fees for inspection, testing, and weighing of grain.

(2) Those fees are a lien upon the grain until paid.

(3) All fees and other charges fixed by the department, including fees for the inspection, grading, weighing, and protein-testing of grain, shall be kept as near the actual cost of the services as possible.

(4) All those fees and charges shall be paid to the department and deposited with the state treasurer. The state treasurer shall place all the fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay claims for expense incurred in inspecting, grading, weighing, and protein-testing of grain, when the claims have been approved as provided by law.

(5) The department may direct the board of investments to invest funds from the earmarked revenue fund pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the proper department account in the earmarked revenue fund.

History: (1), (2)En. Sec. 27, Ch. 216, L. 1921; re-en. Sec. 3581, R.C.M. 1921; amd. Sec. 4, Ch. 154, L. 1929; re-en. Sec. 3581, R.C.M. 1935; amd. Sec. 16, Ch. 218, L. 1974; Sec. 3-213, R.C.M. 1947; (3) thru (5)En. Sec. 1, Ch. 203, L. 1957; amd. Sec. 27, Ch. 147, L. 1963; amd. Sec. 1, Ch. 70, L. 1973; amd. Sec. 29, Ch. 218, L. 1974; amd. Sec. 4, Ch. 16, L. 1977; Sec. 3-233, R.C.M. 1947; R.C.M. 1947, 3-213, 3-233.

80-4-120. Records. (1) The inspectors, samplers, and weighers shall, at places provided for state inspection, have exclusive control of the weighing and grading of grain to be inspected, and the certificates of such officers relative to such weighing and grading shall be conclusive upon all parties interested. Suitable books and records shall be kept in which shall be entered a faithful and true record of every carload or truckload of grain inspected or weighed by them and showing the number of and initial or other designation of the car or truck containing such load, its weight, the kind of grain and its grade, and if graded below standard No. 1 grade, the reason for such grade, the amount of dockage, the amount of fees and forfeitures, and disposition of the same.

(2) For each car or truckload of grain, the inspector shall give a certificate of inspection showing the kind and grade of the same and the reason for all grades below No. 1 and the amount to be allowed for dockage, if any. For each car or truckload weighed, the weigher shall give a weight certificate showing the true weight thereof and containing a statement showing the condition of the car or truck and evidences of leakage or damage, if any.

(3) Such inspection and weight certificates shall be made available to the warehouse loading or unloading the grain, the shipper or his agent, and the railroad company or other carrier over which the grain was shipped or carried; provided, however, that nothing in this section shall be construed to

require grading or weighing by state inspectors and weighers of local deliveries of grain in trucks by the producers thereof.

(4) Inspectors and weighers shall also keep a true record of all appeals and decisions and a complete record of every official act, which books and records shall be open to inspection by any party in interest.

History: En. Sec. 28, Ch. 216, L. 1921; re-en. Sec. 3582, R.C.M. 1921; re-en. Sec. 3582, R.C.M. 1935; amd. Sec. 2, Ch. 7, L. 1957; R.C.M. 1947, 3-214.

80-4-121. Appeals to department — hearing and order. (1) If an owner, consignee, shipper of grain, or warehouseman disagrees with the grade given by the department, he may appeal to the department from the decision within 10 days from the date of certificate by giving notice of appeal and paying a fee fixed by the department. The fee shall be refunded if the decision appealed from is sustained. The notice of appeal may be given by letter stating that the party appeals from the decision of the inspector and specifying the initials and numbers of the cars in which the grain was contained when inspected and graded.

(2) The appellant shall also file with the department a list containing the names and addresses of all parties interested in the subject matter. The department, upon receiving the notice and list of interested parties, shall immediately notify the parties interested of the time and place designated by it for a hearing. At the hearing, which shall be 5 days from the date of receiving the notice, the department shall inquire into the reasonableness and correctness of the original grading. After the hearing, the department shall affirm or modify the grade as justified by the facts and evidence.

History: En. Sec. 30, Ch. 216, L. 1921; re-en. Sec. 3584, R.C.M. 1921; re-en. Sec. 3584, R.C.M. 1935; amd. Sec. 18, Ch. 218, L. 1974; R.C.M. 1947, 3-216.

80-4-122. Delivery of grain containing toxic chemicals to public warehouses. It shall be unlawful for any person, firm, corporation, or association to deliver to any public warehouse any grain in bulk if such grain contains toxic chemicals, providing such person, firm, corporation, or association knew or upon the exercise of reasonable diligence could have known of the presence of toxic chemicals in the grain.

History: En. Sec. 1, Ch. 9, L. 1957; Sec. 94-35-270, R.C.M. 1947; redes. 3-234 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 3-234.

80-4-123. Penalty for violation. Any person, firm, corporation, or association violating the provisions of 80-4-122 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $500 and not less than $250 or be imprisoned for not more than 6 months and not less than 30 days, or both.

History: En. Sec. 2, Ch. 9, L. 1957; Sec. 94-35-271, R.C.M. 1947; redes. 3-235 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 3-235.

80-4-124. Coloration of wheat, oats, rye, or barley treated with injurious or toxic substances. Any wheat, oats, rye, or barley treated with any injurious or toxic substance or chemical shall at the same time be colored or dyed a color contrasting with the natural color of such wheat, oats, rye, or barley, so that the treated wheat, oats, rye, or barley is readily identifiable as having been treated with an injurious or toxic substance or chemical.

History: En. Sec. 1, Ch. 80, L. 1959; Sec. 94-35-271.1, R.C.M. 1947; redes. 3-236 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 3-236.

80-4-125. Sale or offering for sale of treated product prohibited. No person, firm, corporation, or association shall sell or offer for sale any wheat, oats, rye, or barley which has been treated with any injurious or toxic substance or chemical unless the wheat, oats, rye, or barley has been colored or dyed a color contrasting with the natural color of the wheat, oats, rye, or barley. Sections 80-4-124 through 80-4-126 shall not apply to the treatment of any wheat, oats, rye, or barley which is solely for the killing of insects which might be present therein; provided, however, that if such treatment uses any injurious or toxic substance for the killing of insects, then such grain must be colored or dyed as hereinabove provided if offered for sale.

History: En. Sec. 2, Ch. 80, L. 1959; Sec. 94-35-271.2, R.C.M. 1947; redes. 3-237 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 3-237.

80-4-126. Violation. Any person, firm, corporation, or association violating any of the provisions of 80-4-124 and 80-4-125 shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 80, L. 1959; Sec. 94-35-271.3, R.C.M. 1947; redes. 3-238 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 3-238.

Part 2

Grain Merchandising and Storage

80-4-201. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) The terms "agent", "broker", and "commission man" include every person, association, firm, and corporation which engages in the business of negotiating sales or contracts for grain or of making sales or purchases for a commission.

(2) "For hire" means for remuneration of any kind, paid or promised either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements whereby a remuneration is obtained or derived for transportation service. Transportation by a person not in the transportation business is not a service for hire, even though the person owning the property transported shares in the cost or pays for the movement.

(3) "Grain" includes the natural products of the farm, including flax.

(4) The term "grain dealer" includes every person, firm, association, and corporation owning, controlling, or operating a truck, tractor-trailer unit, or warehouse, other than a public warehouse, and engaged in the business of buying grain for shipment or milling.

(5) "Haul" means to transport grain or farm products by any vehicle on land or on water.

(6) "Merchandise" means to store, sell, buy, haul, ship, contract, cause a contract to be let, trade, carry on commerce, traffic, aid, distribute, and abet

in the movement of any commodity, and assemble and distribute farm products or grain.

(7) "Person" means any person, merchandiser, grain dealer, firm, public warehouseman, commercial feedlot operator, trucker, exchange, broker, partnership, corporation, organization, commissionman, trust, association of persons, track buyer, shipper, hauler, contractor, cash buyer, unincorporated association, municipality, or society, however formed.

(8) The term "track buyer" includes every person, firm, association, and corporation which engages in the business of buying grain for shipment or milling and which does not own, control, or operate a warehouse or public warehouse.

History: (1), (4), (8)En. Sec. 20, Ch. 216, L. 1921; re-en. Sec. 3574, R.C.M. 1921; amd. Sec. 1, Ch. 41, L. 1923; amd. Sec. 1, Ch. 154, L. 1929; amd. Sec. 1, Ch. 35, L. 1933; re-en. Sec. 3574, R.C.M. 1935; amd. Sec. 1, Ch. 224, L. 1961; amd. Sec. 1, Ch. 13, L. 1977; Sec. 3-201, R.C.M. 1947; (2), (3), (5) thru (7)En. Sec. 1, Ch. 39, L. 1973; amd. Sec. 3, Ch. 43, L. 1977; Sec. 3-228.1, R.C.M. 1947; R.C.M. 1947, 3-201(4) thru (6), 3-228.1(part).

80-4-202. Licensing of grain merchandisers — fees — exemptions. (1) A person may not merchandise grain without obtaining a license under 80-4-201 through 80-4-207 and without obtaining a certificate of authority if that certificate is required under 35-2-801 or 35-2-802.

(2) Licenses to engage in the business of merchandising of grains shall be issued by the department to reputable persons who apply in writing, submit the scheduled fee, and set forth under oath the place where the applicant intends to carry on the business for which the license is desired. A separate license is required for each place of business and for each truck or tractor-trailer unit where or in which grain is merchandised. Each vehicle or vessel used shall be noted on the application.

(3) A person merchandising grain shall before July 1 pay the department a minimum license fee of $15 for each year or part of a year for each place of business and for each truck or tractor-trailer unit owned, operated, or conducted by that person where or in which grain is merchandised. The department may by rule establish the license fees, which may be graduated according to the volume of business conducted by a licensee and which shall bear a reasonable relationship to the cost of administering 80-4-201 through 80-4-207 and 80-4-234.

(4) All license fees shall be transmitted to the state treasurer and shall be deposited in the general fund.

(5) All licenses expire on June 30 of each year.

(6) A person is exempt from the licensing requirement of this section if he:

(a) is a producer or a feedlot operator within Montana who buys and hauls grain for his own use, in his own vehicle, for his own livestock or his farm;

(b) hauls grain for hire, does not acquire title, and is hauling from an elevator or public warehouse previously licensed;

(c) hauls grain for hire for a producer or feedlot operator for the producer's or feedlot operator's own use within Montana and does not acquire title to the grain;

(d) is a custom combiner hauling grain that he himself combines.

History: En. Sec. 2, Ch. 39, L. 1973; amd. Sec. 4, Ch. 43, L. 1977; R.C.M. 1947, 3-228.2.

80-4-203. Suspension or revocation of license. (1) The department may, after notice and an opportunity for a hearing in accordance with the Montana Administrative Procedure Act have been afforded to the licensee, suspend or revoke a license if the licensee has failed to comply with 80-4-201 through 80-4-207 or rules of the department or if the licensee has:

(a) violated 80-4-201 through 80-4-207 or 80-4-234;

(b) been found guilty of dishonesty, burglary, theft, or any other offense defined in Title 45, chapter 6, part 3;

(c) failed or refused to furnish information, records, or reports required by statute or rule.

(2) The department may, in accordance with the Montana Administrative Procedure Act, summarily suspend a license where the public health, safety, or welfare imperatively requires emergency action.

History: En. Sec. 3, Ch. 39, L. 1973; amd. Sec. 41, Ch. 359, L. 1977; R.C.M. 1947, 3-228.3.

80-4-204. Appointment by nonresident licensee of agent to receive process. A nonresident applying for a license shall file a written power of attorney designating the secretary of state as the agent of the nonresident upon whom service of process may be had in the event of any legal action against the nonresident. A nonresident who has a duly appointed resident agent upon whom legal process may be served as provided by law is not required to designate the secretary of state as his agent for service of process. The department shall be furnished a copy of the designation of the resident agent, which copy shall be certified by the secretary of state.

History: En. Sec. 4, Ch. 39, L. 1973; R.C.M. 1947, 3-228.4.

80-4-205. Bond to be filed before issuance or renewal of license. (1) Before a license is issued or renewed the applicant or licensee shall file with the department a bond in an amount the department prescribes, but not less than $15,000. The bond shall:

(a) cover the period of 1 license year or any part of the license year;

(b) be executed by a corporate surety authorized to do business in the state and be conditioned upon the faithful performance of the acts and duties required by 80-4-234;

(c) be filed with the department before July 1 each year on a form prescribed by the department.

(2) The department may require an additional bond, if the grain business conducted warrants an increase, which shall cover all transactions of merchandising grains.

(3) A person injured by breach of an obligation, for which a bond is given to the department, may take action against the bond in his own name to recover damages caused by the breach.

(4) Liability of the surety upon the bond is limited to the amount of the bond. However, if two or more persons are injured by breach of the obligations for which the bond is given and the damages for violating the conditions of the bond exceed the specified amount of the bond, the recovery on the bond shall be prorated by the surety among all of those injured.

(5) All bonds expire on June 30 each year.

History: **En. Sec. 5, Ch. 39, L. 1973; R.C.M. 1947, 3-228.5.**

80-4-206. Insurance required of warehouseman. In addition to the bond and license, a public warehouseman shall obtain and maintain insurance approved by the department as adequate to protect the holders of warehouse receipts from loss. A license shall not be issued to a public warehouseman or may be revoked if the public warehouseman fails to comply with this insurance requirement.

History: **En. Sec. 6, Ch. 39, L. 1973; R.C.M. 1947, 3-228.6.**

80-4-207. Violation — penalty. A person who violates 80-4-201 through 80-4-206 is guilty of a misdemeanor and shall be fined not less than $300 or more than $500. Each day of violation is a separate offense.

History: **En. Sec. 7, Ch. 39, L. 1973; R.C.M. 1947, 3-228.7.**

80-4-208. Injunction to halt merchandising of grain by person without license or bond. The merchandising of grain by any person without the license or bond required by 80-4-201 through 80-4-206 may be enjoined by the district court on petition of the department. If the respondent is found to have engaged in the merchandising of grain without a license or bond, the court shall enjoin him from further merchandising of grain until he has been duly licensed and bonded. However, it shall not be necessary for the department to show that any individual has been injured by the actions complained of in order to issue the injunction. The procedure for injunctive relief under this section shall be the same as any other action for an injunction pursuant to Title 27. The injunction provided by this section is deemed to be an additional remedy to the criminal prosecution and punishment provided in parts 1 and 2 of this chapter.

History: **En. 3-228.8 by Sec. 1, Ch. 86, L. 1974; R.C.M. 1947, 3-228.8.**

80-4-209. Reports — penalty for failure to report. Every person licensed to merchandise grain shall make regular reports to the department, under oath, at intervals set by rule of the department and on forms prepared by it. The reports shall show the total weight of each kind of grain received and shipped, the amount of outstanding warehouse receipts on that date, and a statement of the amount of grain on hand to cover them. The department may also require by rule special reports at any time. The department may inspect the business of every person licensed to merchandise grain whenever considered proper. The books, accounts, records, papers, and proceedings of every person licensed to merchandise grain are at all times during business hours subject to inspection. A person who knowingly falsifies any of his reports to the department, who fails to make the reports when requested by the department, or who refuses or resists inspection is guilty of a misdemeanor and shall be fined not less than $300 or more than $500.

History: **En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R.C.M. 1921; amd. Sec. 5, Ch. 41, L. 1923; re-en. Sec. 3589, R.C.M. 1935; amd. Sec. 2, Ch. 224, L. 1961; amd. Sec. 23, Ch. 218, L. 1974; amd. Sec. 7, Ch. 13, L. 1977; amd. Sec. 2, Ch. 43, L. 1977; R.C.M. 1947, 3-227.**

80-4-210 through 80-4-220 reserved.

80-4-221. Copies of grades and rules to be furnished warehousemen — display of them. (1) The department shall, immediately after the establishment of grades and the adoption of rules fixing dockage, supply all public warehousemen with a copy of the grades and rules. A public warehouseman shall keep a copy on file in a convenient place in every warehouse. If an office is maintained in connection with the warehouse, a copy of the grades and rules shall be kept on file in the office. A placard notice shall be posted in a conspicuous place in every warehouse and office, reading: "A copy of Montana grades and rules is on file here for information of interested parties."

(2) A warehouseman shall exhibit a copy of the grades and rules to any interested party at any warehouse or office and permit the interested party to examine the copy.

History: En. Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R.C.M. 1921; re-en. Sec. 3580, R.C.M. 1935; amd. Sec. 15, Ch. 218, L. 1974; R.C.M. 1947, 3-212.

80-4-222. Charges of public warehousemen. (1) Public warehousemen subject to this chapter may charge maximum rates as are adopted and published by the department for the handling, cleaning, and storage of grain.

(2) The department shall, on its own initiative, regularly review the rates established and, in addition, shall conduct such review within 30 days following receipt of a written request by any group representing at least 50 persons subject to the rules or rates.

(3) The schedule of regulations and rates for cleaning, handling, and storage shall be posted in a conspicuous place where grain is unloaded for cleaning, handling, or storage.

(4) Failure on the part of a public warehouseman to comply with this chapter renders the licenses of the warehouseman subject to revocation by the department.

History: En. Sec. 25, Ch. 216, L. 1921; re-en. Sec. 3579, R.C.M. 1921; amd. Sec. 3, Ch. 154, L. 1929; amd. Sec. 2, Ch. 35, L. 1933; re-en. Sec. 3579, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1957; amd. Sec. 1, Ch. 196, L. 1974; amd. Sec. 11, Ch. 218, L. 1974; amd. Sec. 1, Ch. 302, L. 1975; amd. Sec. 1, Ch. 177, L. 1977; R.C.M. 1947, 3-208.

80-4-223. Discrimination in charges by warehousemen prohibited. A public warehouseman subject to this chapter may not directly or indirectly, by any special charge, rebate, drawback, or other device demand, collect, or receive from any person a greater or lesser compensation for any service rendered in the handling or storage of grain than he demands, collects, or receives from any other person for a similar and contemporaneous service under substantially similar circumstances or conditions. A public warehouseman may not make or give any undue or unreasonable preference or advantage to any person, company, or corporation or subject any person, company, or corporation to any undue or unreasonable prejudice or disadvantage. A warehouseman who violates this section is guilty of a misdemeanor.

History: En. Sec. 25, Ch. 209, L. 1919; re-en. Sec. 3585, R.C.M. 1921; re-en. Sec. 3585, R.C.M. 1935; amd. Sec. 19, Ch. 218, L. 1974; R.C.M. 1947, 3-217.

80-4-224. Duty of warehousemen to receive grain — warehouse receipt. A public warehouseman shall receive for storage and shipment without discrimination of any kind, so far as the capacity of his warehouse will permit, all grain tendered him in the usual course of business in suitable condition for storage. A warehouse receipt, in form prescribed by law and the rules of the department, shall be issued and delivered to the owner or his representative immediately upon receipt of the load or parcel of grain.

History: **En. Sec. 26, Ch. 209, L. 1919; re-en. Sec. 31, Ch. 216, L. 1921; re-en. Sec. 3586, R.C.M. 1921; re-en. Sec. 3586, R.C.M. 1935; amd. Sec. 20, Ch. 218, L. 1974; R.C.M. 1947, 3-218.**

80-4-225. Penalty for unlawful issue of warehouse receipt. (1) It shall be unlawful for any public grain warehouseman to issue a receipt for grain, except on the actual delivery of the grain into the warehouse, or to issue a warehouse receipt for a greater amount of grain than that actually received.

(2) Any person violating any of the provisions of this section and any grain inspector knowingly permitting any grain to be delivered contrary to the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $100 or more than $500 or imprisoned in the county jail not less than 30 days or more than 6 months.

History: **En. Sec. 28, Ch. 209, L. 1919; re-en. Sec. 3587, R.C.M. 1921; re-en. Sec. 3587, R.C.M. 1935; R.C.M. 1947, 3-219.**

80-4-226. Designation of grain delivered to warehouse. In cases of grain being sold outright to the warehouseman at the time of delivery or grain placed in store with the warehouseman to be sold at a future time to the warehouseman to whom delivered, settlement shall be made on the basis of grade, quality, protein content, and quantity. In cases of storage of grain with intent of future redelivery of the grain, the owner must so designate at time of delivery to enable the warehouseman to special bin. Upon failure to so designate at time of delivery, the grain will lose its identity in general storage, whereupon the owner is obligated to accept quantity of like grade, kind, and quality (as provided for under the United States Grain Standards Act) from the warehouseman's general storage.

History: **En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R.C.M 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; re-en. Sec. 3588, R.C.M. 1935; amd. Sec. 4, Ch. 13, L. 1977; R.C.M. 1947, 3-220.**

80-4-227. Kind and quality of grain to be delivered on return of receipt. (1) Upon the return of the receipt to the proper warehouseman, properly endorsed, and upon payment or tender of all advances and legal charges, grain of the grade agreed upon and of equal quality or value and quantity equal to that placed by him in storage shall be delivered to the holder of the receipt. Delivery shall be made within 48 hours after the facilities for receiving the grain have been provided. At the option of the owner the warehouseman shall deliver the grain at terminal or, if mutually agreed, the equivalent market value of the grain on that date, less any freight and storage charges to terminal and less other charges which may be allowed by the department.

(2) Owners of warehouse receipts surrendered for shipment shall furnish the warehouseman with written instructions regarding the capacity of cars to be ordered from the transportation company and the manner of loading and

billing shipments made in the cars. The warehouseman shall load and bill all shipments in accordance with instructions given. The warehouseman is liable for the amount of excess freight paid and for other damages suffered by the owner of the warehouse receipt, resulting from failure to follow accurately the loading and billing instructions.

(3) The owner of the warehouse receipt shall immediately furnish the warehouseman a duplicate copy of the original state weighmaster's certificate of weight of the carlot shipment at terminal.

History: En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R.C.M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; re-en. Sec. 3588, R.C.M. 1935; amd. Sec. 21, Ch. 218, L. 1974; R.C.M. 1947, 3-221.

80-4-228. Dispute as to grade or dockage — laboratory test to be made. If a dispute or disagreement arises between the party receiving and the party delivering the grain at any public warehouse in this state as to the proper grade or dockage of grain in accordance with standards at terminal points, an agreed average sample of at least 1 quart of the grain in dispute may be taken by the parties interested and forwarded in a suitable container marked for identification by the interested parties, mail or express charges prepaid, with the names and addresses of the parties, to the department. The department shall examine the grain and determine what grade the sample is entitled to under the inspection rules and which amount of dockage it contains. The findings of the inspection are binding upon both parties, subject to appeal, as provided in 80-4-121. If the grain in question is damp, musty, or otherwise out of condition, this fact, with any other necessary information, must accompany the sample.

History: En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R.C.M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; re-en. Sec. 3588, R.C.M. 1935; amd. Sec. 22, Ch. 218, L. 1974; R.C.M. 1947, 3-222.

80-4-229. Date of termination of storage contracts evidenced by warehouse receipts. All storage contracts on grain in store in public local grain warehouses, as evidenced by a warehouse receipt, shall terminate on June 30 of each year.

History: En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R.C.M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; re-en. Sec. 3588, R.C.M. 1935; R.C.M. 1947, 3-223.

80-4-230. Termination of storage contract — sale of grain for charges. Storage on any or all grain may be terminated by the owner at any time before the date mentioned herein by the payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of such grain or notice to warehouseman to sell the same. In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of the storage contract entered into prior to the expiration of the storage contract, the warehouseman shall, upon the expiration of the storage contract, sell so much of such stored grain at the local market price on the close of business on that day as is sufficient to pay the accrued storage charges and shall thereupon issue new warehouse receipts for the balance of the grain to the owner thereof upon surrender by him of the original warehouse receipts. The warehouseman shall notify all warehouse receipt holders of the provisions of this section by June 1 of each year.

History: En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R.C.M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; re-en. Sec. 3588, R.C.M. 1935; amd. Sec. 5, Ch. 13, L. 1977; R.C.M. 1947, 3-224.

80-4-231. Disposal of grain forbidden without notice to department and compliance with law. No warehouseman may sell or otherwise dispose of or deliver out of store, except to the owner, any stored grain, except upon notice in advance to the department and after complying in full with the laws of the state and the regulations of the department relating to the handling of stored grain.

History: En. Sec. 3588-A, R.C.M. 1921, by Sec. 4, Ch. 41, L. 1923; re-en. Sec. 3588.1, R.C.M. 1935; amd. Sec. 6, Ch. 13, L. 1977; R.C.M. 1947, 3-225(part).

80-4-232. Delivery of grain from different warehouse. Any person, firm, association, or corporation owning or operating more than one public warehouse in this state may deliver grain from one warehouse in settlement of warehouse receipts issued for grain stored in another warehouse when grain for storage has been presented at any warehouse in excess of its available storage capacity, provided that:

(1) this does not confer upon such warehouseman a right to make delivery of grain of substantially lower value than that delivered for store, though of the same technical grade, in settlement of warehouse receipts;

(2) such warehouseman shall at all times keep on hand in bonded warehouses grain of quality and quantity sufficient to settle all outstanding warehouse receipts; and

(3) freight and other charges shall be figured on the basis of the point of receipt.

History: En. Sec. 3588-A, R.C.M. 1921, by Sec. 4, Ch. 41, L. 1923; re-en. Sec. 3588.1, R.C.M. 1935; amd. Sec. 6, Ch. 13, L. 1977; R.C.M. 1947, 3-225(part).

80-4-233. Possession by warehouseman considered bailment, when — prior right of warehouse receipt holder to grain. Whenever any grain shall be delivered to any person, association, firm, or corporation doing a grain, warehouse, or grain elevator business in this state and the receipt issued therefor provides for the delivery of a like amount, kind, grade, and quality to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so delivered. In no case shall the grain so stored be liable to seizure upon process of any court in an action against such bailee, except action by owners of such warehouse receipts to enforce the terms thereof, but such grain shall at all times in the event of failure or insolvency of such bailee be first applied exclusively to the redemption of outstanding storage warehouse receipts for grain so stored with such bailee.

History: En. Sec. 3588-B, R.C.M. 1921, by Sec. 4, Ch. 41, L. 1923; re-en. Sec. 3588.2, R.C.M. 1935; amd. Sec. 11-101, Ch. 264, L. 1963; R.C.M. 1947, 3-226.

80-4-234. Protection of holders of warehouse receipts. When a warehouseman, grain dealer, track buyer, broker, agent, or commission man cannot, or where there is a probability that he will not, meet in full all storage obligations or other obligations resulting from the delivery of grain, the department shall intervene in the interests of the holders of warehouse receipts or other evidences of delivery of grain for which payment has not been made. The department may protect the interests of the holders of warehouse receipts or other evidences of the delivery of grain for which payment has not been made. When examination by the department discloses that it is impossible for a warehouseman, grain dealer, track buyer, broker, agent, or commission man to settle in full for all outstanding warehouse receipts or other evidences of delivery of grain for which payment has not been made, without recourse to the bond filed by the warehouseman, grain dealer, track buyer, broker, agent, or commission man, the department for the benefit of holders of unpaid warehouse receipts or other evidences of delivery for which payment has not been made shall demand payment of its undertaking by the surety on the bond in an amount necessary for full settlement of warehouse receipts or other evidences of delivery for which payment has not been made. The attorney general or any county attorney of this state shall represent the department in a necessary action against a bond when facts constituting grounds for action are presented to him by the department.

History: En. Sec. 3589-A, R.C.M. 1921, by Sec. 6, Ch. 41, L. 1923; amd. Sec. 1, Ch. 42, L. 1925; re-en. Sec. 3589.1, R.C.M. 1935; amd. Sec. 24, Ch. 218, L. 1974; R.C.M. 1947, 3-229.

Part 3

Commercial Mustard — Standards and Merchandising

80-4-301. Standard classes of mustard seed — grade requirements. (1) The standard classes of mustard seed for the state of Montana shall be as follows:

(a) fancy—cultivated tame yellow mustard seed;
(b) class 1—cultivated tame yellow mustard seed;
(c) class 2—cultivated tame brown mustard seed;
(d) class 3—cultivated tame Montana oriental mustard seed;
(e) class 4—mixed cultivated tame mustard seed.

(2) Classes 1, 2, and 3 shall contain not more than 5% of other classes. Class 4 shall be any mixture of cultivated tame mustard seed having an admixture of other classes in excess of 5% and shall be graded according to the predominating class in the mixture.

(3) Grade requirements for cultivated tame mustard seed (percentage figures determined after the removal of dockage):

	GRADE NUMBER			
	Fancy	1	2	3
Sound cultivated mustard not less than	99%	98 ½%	97%	95%
Damaged kernels				
heat-damaged	0	0.1%	0.2%	0.5%
Total	1%	1 ½%	3 %	5 %

	GRADE NUMBER			
	Fancy	1	2	3
Other classes				
wild mustard	0	0.1%	0.2%	0.5%
Total	0	0.5%	2.0%	5.0%
Foreign material other than dockage				
Cockle seed	0	0.1%	0.2%	0.3%
Weed seed	0	0.3%	0.5%	0.7%
Total	0	1 %	1 ½%	2 %

Sample: Sample grade shall include mustard seed which does not come within the requirements of any of the grades, No. 1 to No. 3, inclusive, or which has any objectionable foreign odor or is sour, heating, hot, or is otherwise of distinctly low quality or contains small, inseparable stones or cinders.

History: En. Sec. 1, Ch. 35, L. 1941; amd. Sec. 1, Ch. 170, L. 1957; amd. Sec. 20, Ch. 13, L. 1977; R.C.M. 1947, 3-1901.

80-4-302. Definitions and specifications. The following definitions and specifications are hereby adopted and made legal:

(1) "Damaged seeds" include all seeds and pieces of seeds of mustard seed which are completely covered with mold, very green, sprouted, frosted, badly ground damaged, badly weather damaged, or otherwise distinctly damaged.

(2) "Heat damaged seeds" include seeds and pieces of seeds of mustard seed which have been distinctly discolored by external heat or as a result of heating caused by fermentation.

(3) "Dockage" includes sand, dirt, weed seeds, weed stems, chaff, straw, mustard seed other than tame mustard, and any other foreign material which can be removed readily from the mustard by the use of appropriate sieves, cleaning devices, or other practical means suited to separate the foreign material present. The term also includes undeveloped, shriveled, and small pieces of mustard seeds removed in properly separating the foreign material which cannot be recovered by properly rescreening or recleaning. The quantity of dockage shall be calculated in terms of percentage. When less than ½ of 1% it shall be disregarded. The percentage of dockage so determined and stated shall be added to the grade designation. Dockage is to be calculated in gradients of ½ of 1%, that is to say, 0% to 0.4% will be designated as no dockage, 0.5% to 0.9% will be designated as ½ of 1% dockage, 1% to 1.4% will be designated as 1% dockage, 1.5% to 1.9% will be designated as 1.5% dockage, and so on.

(4) "Foreign material other than dockage" includes all matter other than tame cultivated mustard seed which is not separated in the proper determination of dockage. However, rapeseed, common wild mustards, and other seeds that blend with class 2 and class 3 mustard seed and thus are not readily identified and the total of which is not in excess of 2.5% shall not be considered foreign material and shall not be considered in grading such classes of mustard seed.

(5) Percentages, except in the case of moisture, shall be percentages ascertained by weight.

(6) Percentage of moisture shall be that ascertained by use of the equipment and procedure prescribed by the department.

(7) Percentage of dockage shall be that ascertained by use of the equipment and procedure prescribed by the department.

(8) The test weight per bushel shall be the weight per winchester bushel as determined by the testing apparatus and the method of use thereof prescribed by the department or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

History: En. Sec. 2, Ch. 35, L. 1941; amd. Sec. 1, Ch. 31, L. 1971; amd. Sec. 21, Ch. 13, L. 1977; amd. Sec. 6, Ch. 315, L. 1977; R.C.M. 1947, 3-1902(1) thru (4), (6) thru (9).

80-4-303. Basis of determination. (1) Each determination of dockage, temperature, moisture, odor, and content of live weevil or other insects injurious to stored mustard seed shall be upon the basis of the seed as a whole.

(2) Determination of the percentage of damage, heat damage, sound cultivated mustard seed, and foreign material and determinations of all other factors not otherwise provided for shall be on the basis of a portion cut from the original sample and separated by handpicking.

History: En. Sec. 2, Ch. 35, L. 1941; amd. Sec. 1, Ch. 31, L. 1971; amd. Sec. 21, Ch. 13, L. 1977; amd. Sec. 6, Ch. 315, L. 1977; R.C.M. 1947, 3-1902(5), (10).

80-4-304. Weights per bushel. (1) Legal test weights per bushel are the weight per winchester bushel as determined by the testing apparatus and the method of use thereof prescribed by the department or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(2) Weight per bushel for tame yellow mustard seed shall be:

Fancy	56 lbs.
No. 1	54 lbs.
No. 2	52 lbs.
No. 3	50 lbs.

(3) Weight per bushel for tame brown and tame Montana oriental mustard seed shall be:

No. 1	52 lbs.
No. 2	51 lbs.
No. 3	50 lbs.

(4) All seeds weighing less than the above per bushel shall be graded as sample weight, provided that the percentage of damage, heat damage, sound cultivated mustard seed, and foreign material and determination of all other factors not otherwise provided for shall be on the basis of a portion cut from the original sample and separated by hand picking.

History: En. Sec. 3, Ch. 35, L. 1941; amd. Sec. 2, Ch. 170, L. 1957; amd. Sec. 22, Ch. 13, L. 1977; R.C.M. 1947, 3-1903.

80-4-305. Moisture. The mustard seed in grades 1 to 3, inclusive, shall contain not more than 11% moisture. "Tough" mustard seed shall be all mustard seed containing more than 11% moisture and shall be graded and designated according to the grade requirements of the standards applicable to such seed if it were not tough, and there shall be added to and made a part of the grade designation the word "tough".

History: En. Sec. 4, Ch. 35, L. 1941; R.C.M. 1947, 3-1904.

80-4-306. Weevily mustard seed. Weevily mustard seed shall be mustard seed which is infested with live weevil or other insects injurious to stored grain. Weevily mustard seed shall be graded and designated according to the grade requirements of the standards applicable to such mustard seed if it were not weevily, and there shall be added and made a part of the grade designation the word "weevily".

History: En. Sec. 5, Ch. 35, L. 1941; R.C.M. 1947, 3-1905.

80-4-307. Administration. The department shall administer and enforce 80-4-301 through 80-4-307. The department may adopt necessary rules to administer and enforce 80-4-301 through 80-4-307. The department shall fix the fees for inspection and weighing of mustard seed, and the fees are a lien upon the mustard seed until paid. The fees shall be collected by the department. The department shall deposit the fees with the state treasurer who shall deposit them in the earmarked revenue fund. All operating expenses of 80-4-301 through 80-4-307 shall be paid from those fees.

History: En. Sec. 6, Ch. 35, L. 1941; amd. Sec. 37, Ch. 147, L. 1963; amd. Sec. 100, Ch. 218, L. 1974; R.C.M. 1947, 3-1906.

80-4-308. Penalty. Anyone violating any of the terms of 80-4-301 through 80-4-307 shall upon conviction be guilty of a misdemeanor and shall be fined not less than $25 or more than $100.

History: En. Sec. 7, Ch. 35, L. 1941; amd. Sec. 7, Ch. 315, L. 1977; R.C.M. 1947, 3-1907.

80-4-309 and 80-4-310 reserved.

80-4-311. License and bond for persons contracting for purchase of mustard seed — when required — deposit of fees — revocation of licenses. (1) All persons, firms, partnerships, corporations, and associations engaging in the business of contracting in advance of harvesting for the purchase of mustard seed crops to be paid for on delivery of the crops shall, before March 1 of each year, pay to the state treasurer a license fee of $10 and shall, before March 1 of each year, give a bond, with sureties approved by the department, in an amount the department may require but not less than $10,000. The bond shall be conditioned upon the payment for the contracted seed at the price specified in the contract and upon the payment of the license fee. Upon the approval of the bond, the department shall issue the license for a period of 1 year.

(2) A person who begins the business described in subsection (1) of this section after March 1 of any year shall pay the license fee and furnish the bond before engaging in the business.

(3) All funds collected from license fees shall be deposited by the department with the state treasurer for credit to the general fund.

(4) The department may revoke for cause any license issued under this section.

(5) A licensee under this section shall, at the request of the department, report the amount of seed contracted.

History: En. Sec. 1, Ch. 64, L. 1939; amd. Sec. 101, Ch. 218, L. 1974; amd. Sec. 8, Ch. 315, L. 1977; R.C.M. 1947, 3-1908.

80-4-312. Enforcement. The department shall enforce 80-4-311 and for that purpose shall adopt necessary and proper rules.

History: En. Sec. 2, Ch. 64, L. 1939; amd. Sec. 102, Ch. 218, L. 1974; R.C.M. 1947, 3-1909.

80-4-313. Penalty. Any person, firm, partnership, corporation, or association who shall engage in or carry on the business of contracting in advance of harvesting for the purchase of mustard seed crops to be paid for on delivery of said crop or crops without having license therefor shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than $100, and each and every day that such business is so carried on or engaged in shall constitute a separate offense.

History: En. Sec. 5, Ch. 64, L. 1939; R.C.M. 1947, 3-1912.

CHAPTER 5

AGRICULTURAL SEED

Part 1 — Seed Labeling

Section

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Part 1

Seed Labeling

80-5-101. Definitions. Terms used in this part and not otherwise identified are hereby defined:

(1) Agricultural seeds shall be the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds and shall include lawn seeds and mixtures of seeds.

(2) Vegetable seeds shall include the seeds of those crops that are or may be grown in gardens or on truck farms and are or may be sold generally under the name of vegetable seeds.

(3) Flower seeds shall include seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and are commonly known and sold under the name of flower seeds in this state.

(4) (a) The term "weed seeds" shall include the seeds or bulblets of all plants generally recognized as weeds within this state and shall include noxious weed seeds.

(b) Noxious weed seeds are divided into two groups defined as follows:

(i) "Prohibited noxious weed seeds" are the seeds of perennial and other serious weeds that not only reproduce by seed but also may spread by underground roots, stems, and other reproductive parts and which, when well established, are highly destructive and difficult to control in this state by ordinary good cultural practice. Prohibited noxious weed seeds shall include the seeds of:

Canada thistle	(Cirsium arvense)
leafy spurge	(Euphorbia esula)
hoary cress	(Cardaria draba)
quackgrass	(Agropyron repens)
Russian knapweed	(Centaurea repens)
perennial sowthistle	(Sonchus arvensis)
field bindweed	(Convolvulus arvensis)
dalmatian toadflax	(Linaria dalmatica)
halogeton	(Halogeton glomeratus)
medusa-head wildrye	(Elymus caput-medusae)
creeping bellflower	(Campanula rapunculoides)
yellow toadflax	(Linaria vulgaris)

(ii) "Restricted noxious weed seeds" are the seeds of weeds that are very objectionable in fields, lawns, and gardens of this state but can be controlled by good cultural practices. Restricted noxious weed seeds shall include the seeds of:

dodder	(Cuscuta spp.)
blue lettuce	(Lactuca pulchella)
St.-Johnswort	(Hypericum perforatum)
oxeye daisy	(Chrysanthemum leucanthemum)
spotted knapweed	(Centaurea maculosa)
hoary alyssum	(Berteroa incana)
wild oats	(Avena fatua)
buckhorn plantain	(Plantago lanceolata)
chickweed	(Stellaria spp.)

curly dock	(Rumex crispus)

(5) The term "hybrid" applied to kinds of varieties of seed means the first generation seed of a cross produced by controlling the pollination and by combining:

(a) two or more inbred lines;

(b) one inbred or a single cross with an open pollinated variety; or

(c) two or more selected clones, seed lines, varieties, or species.

(6) "Controlling the pollination" means to use a method hybridization which will produce pure seed which is at least 75% hybrid seed. Hybrid designations shall be treated as variety names.

(7) The terms "approximate percentage" and "approximate number" shall mean the percentage or number with the variations above or below as allowed according to the tolerance limits defined in the "rules for seed testing" adopted by the association of official seed analysts.

(8) The term "percentage of germination" shall mean the percentage of seeds which show normal sprouts as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of seed, as specified in the "rules for seed testing" adopted by the association of official seed analysts.

(9) The term "name of state in which the seed was grown" shall mean any of the several states of the United States or the foreign country.

(10) The term "other crop seeds" shall mean any agricultural, vegetable, or flower seeds other than the seed or the mixture of seeds under consideration.

(11) The term "sell" shall include "offer for sale", "expose for sale", "have in possession for sale", "exchange", "barter", or "trade". It shall also include agricultural seeds which are furnished to growers for the production of a crop on contract.

(12) The term "certifying agency" means:

(a) an agency authorized under the laws of a state, territory, or possession to officially certify seed and which has standards and procedures to assure the genetic purity and identity of the seed certified; or

(b) an agency of a foreign country determined by the department to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under subsection (12)(a) of this section.

(13) The term "protected variety" means a variety for which a certificate has been issued by the U.S. plant variety protection office or for which an application for protection has been filed granting the owner or his authorized agent exclusive rights in the sale and distribution of the variety.

History: **En. Sec. 1, Ch. 361, L. 1969; amd. Sec. 1, Ch. 390, L. 1973; R.C.M. 1947, 3-802.1.**

80-5-102. Labeling of agricultural seeds. The owner, vendor, or person in possession of any package, parcel, or lot of agricultural seeds, as defined in 80-5-101, that contains 1 pound or more of agricultural seeds, whether in package or in bulk, shall, before offering the seeds for sale, affix in a conspicuous place on the exterior of the container a written or printed label in the English language in legible type or copy containing a statement specifying:

(1) a lot number or other distinguishing mark;

(2) kind. The name of each kind of seed present in excess of 5% shall be shown on the label and need not be accompanied by the word "kind". When two or more kinds of seed are named on the label, the name of each kind shall be accompanied by the percentage of each. When only one kind of seed is present in excess of 5% and no variety name or type designation is shown, the percentage of that kind may be shown as "pure seed" and such percentage shall apply to seed of the kind named.

(3) variety, as follows:

(a) the following kinds of agricultural seeds shall be labeled to show the variety name or the words "variety not stated":

alfalfa
barley
bean, field
beet, field
brome, smooth
clover, crimson
clover, red
clover, white
corn, field
corn, pop
fescue, tall
flax
millet, foxtail
oat
pea, field
rye
safflower
sorghum
sorghum-sudan hybrid
soybean
sudan grass
sunflower
trefoil, birdsfoot
wheat, common
wheat,durum

(b) if the name of the variety is given, the name may be associated with the name of the kind with or without the words "kind and variety". The percentage in this case may be shown as "pure seed" and shall apply only to seed of the variety named. If separate percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term "hybrid" shall be clearly associated with the respective percentages. When two or more varieties are present in excess of 5% and are named on the label, the name of each variety shall be accompanied by the percentage of each.

(4) that the seed is hybrid, if any one kind or kind and variety of seed present in excess of 5% is "hybrid" seed. The percentage that is hybrid shall be at least 95% of the percentage of pure seed shown unless the percentage of pure seed which is hybrid seed is shown separately. If two or more kinds or varieties are present in excess of 5% and are named on the label, each that is hybrid shall be designated as "hybrid" on the label. No one kind or variety of seed may be labeled as "hybrid" if the pure seed contains less than 75% hybrid seed. Any one kind or kind and variety that has pure seed which is less than 95% but more than 75% hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show:

(a) the percentage of pure seed that is hybrid seed; or

(b) a statement such as "Contains from 75% to 95% hybrid seed";

(5) state or country of origin, if known, of alfalfa, red clover, white clover, native range grasses, and field corn other than hybrid. If the origin is unknown, the fact shall be stated.

(6) the approximate percentage of germination of agricultural seed, together with the date of test of germination. In all cases where hard seeds

remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the percentage of hard seeds may be added to the percentage of germination and stated as "total germination and hard seed".

(7) the approximate percentage by weight of pure seed, meaning the freedom of agricultural seeds from inert matter and from other seeds;

(8) the approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in agricultural seeds;

(9) the approximate total percentage by weight of weed seeds;

(10) the approximate percentage by weight of other crop seeds in agricultural seeds;

(11) the name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of agricultural, vegetable, or flower seeds;

(12) the full name and address of the seedsman, importer, dealer or agent, or other person, firm, or corporation selling the agricultural seed;

(13) in the case of mixtures of agricultural seeds which contain two or more kinds of seed in excess of 5% by weight of each, when sold as mixtures:

(a) name of mixture;

(b) name and approximate percentage by weight of each kind of agricultural seed present in the mixture in excess of 5% by weight of the total mixture;

(c) approximate percentage by weight of broken seeds and other inert matter in the mixture of agricultural seeds;

(d) approximate percentage by weight of weed seeds as defined in 80-5-101;

(e) approximate percentage by weight of other crop seeds in the mixture of agricultural seeds;

(f) name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of mixtures of agricultural seeds, subject, however, to restrictions as specified in 80-5-105;

(g) approximate percentage of germination of each kind of agricultural seed present in the mixture in excess of 5% by weight, together with the month and year the seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the hard seed may be added to the percentage of germination and stated as "total germination and hard seed".

(h) full name and address of the vendor of the mixture.

History: **En. Sec. 2, Ch. 361, L. 1969; amd. Sec. 2, Ch. 390, L. 1973; amd. Sec. 10, Ch. 13, L. 1977; R.C.M. 1947, 3-802.2(1).**

80-5-103. Exchange of seed between labelers. When seed is exchanged or transferred from one seed labeler to another, it shall be accompanied by a shipping document which clearly shows the kind(s) of seed and quantity of each kind. Each container in a lot shall carry appropriate lot number designation and shall be accompanied by mechanical analysis for each lot so involved.

History: **En. Sec. 2, Ch. 361, L. 1969; amd. Sec. 2, Ch. 390, L. 1973; amd. Sec. 10, Ch. 13, L. 1977; R.C.M. 1947, 3-802.2(2).**

80-5-104. Labeling of vegetable and flower seeds. Vegetable and flower seeds in packets and in larger containers shall be labeled with the required information as follows:

(1) each container of 1 pound or less:

(a) the commonly accepted name of the kind or the kind and variety of the seed;

(b) the name and address of the person who labeled the seed or who sells the seed within this state;

(c) the name and number per pound of each kind of restricted noxious weed seeds as prescribed in 80-5-105;

(d) in the case of seed which has a percentage of germination less than the standard prescribed in the Federal Seed Act:

(i) the percentage of germination;

(ii) the percentage of hard seed, if more than 1%;

(iii) the month and year the test to determine the data required by this section was completed;

(iv) the words "below standard germination" in not less than 8-point boldface type;

(2) each container of more than 1 pound:

(a) the name of the kind and variety of the contents;

(b) the lot numbers or other lot identification;

(c) the name and number per pound of each kind of restricted noxious weed seeds as prescribed in 80-5-105;

(d) the percentage of germination and whether the percentage of germination meets or exceeds the standard established in the Federal Seed Act;

(e) the percentage of hard seed, if more than 1%;

(f) the month and year the test to determine the data required by this section was completed;

(g) the name and address of the person who labeled the seed or who sells the seed within this state.

History: En. Sec. 3, Ch. 361, L. 1969; R.C.M. 1947, 3-802.3.

80-5-105. Prohibitions. A person, firm, corporation, partnership, or association may not sell or transport for use in planting in this state any agricultural, vegetable, or flower seed that:

(1) contains prohibited noxious weed seeds;

(2) contains restricted noxious weed seeds in excess of the maximum numbers per pound as follows:

Common name	Species	Number of seeds per pound
dodder	(Cuscuta spp.)	18
blue lettuce	(Lactuca pulchella)	27
St.-Johnswort	(Hypericum perforatum)	27
oxeye daisy	(Chrysanthemum leucanthemum)	90
spotted knapweed	(Centaurea maculosa)	18
hoary alyssum	(Berteroa incana)	9
wild oats	(Avena fatua)	45
buckhorn plantain	(Plantago lanceolata)	90
chickweed	(Stellaria spp.)	9
curly dock	(Rumex crispus)	45

(3) contains in excess of 2% or more of weed seed;

(4) is offered or exposed for sale more than 12 calendar months from the last day of the month in which the germination test was completed. This 12-month limitation does not apply when seed is packaged in hermetically sealed containers within 12 months after harvest. The container must be conspicuously labeled in not less than 8-point type to indicate that:
(a) the container is hermetically sealed;
(b) the seed has been preconditioned as to moisture content;
(c) the germination test is valid for a period not to exceed 18 months from the date of the germination test for seeds offered for sale on a wholesale basis and for a period not to exceed 36 months for seeds offered for sale at retail;
(d) the germination of vegetable seed at the time of packaging was equal to or above standards prescribed in the Federal Seed Act of August 1939, 7 U.S.C. 1551 through 1610, amended October 15, 1967, with subsequent revisions;

(5) is represented in any manner to be for lawn seeding purposes, unless it contains at least 50% pure seed of fine-textured perennial species which shall be specified by rules under this part. However, grass mixtures which do not contain 50% pure seed of fine-textured perennial grasses may be sold. When these grass mixtures are contained in packages of 25 pounds or less, they shall carry the statements: "Not recommended for a fine-textured perennial turf. Satisfactory for a temporary ground cover or where coarse grass is not objectionable." A definition of fine-textured varieties to be adopted in the rules is as follows:
(a) bluegrasses—all varieties except Canada bluegrass (Poa compressa), annual bluegrass (Poa annua), and rough bluegrass (Poa trivialis);
(b) chewings red fescue and all improved varieties;
(c) creeping red fescue and all improved varieties;
(d) bentgrass—all varieties;
(e) fine-textured ryegrasses;

(6) is labeled, advertised, or otherwise represented as being certified seed of any class thereof unless:
(a) it has been determined by a seed certifying agency that such seed conforms to standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety; and
(b) the seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate), or variety;

(7) is labeled with a variety name for which a U.S. certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act (7 U.S.C. 2321, et. seq.) without the authority of the owner of the variety or is labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which the certificate or application for "protection" specifies sale only as a class of certified seed, provided that seed from a certified lot may be labeled as to variety

name when used in a mixture by or with approval of the owner of the variety.

History: En. Sec. 4, Ch. 361, L. 1969; amd. Sec. 12, Ch. 390, L. 1973; Sec. 3-820, R.C.M. 1947; amd. and redes. 3-802.4 by Sec. 45, Ch. 218, L. 1974; amd. Sec. 11, Ch. 13, L. 1977; amd. Sec. 5, Ch. 315, L. 1977; R.C.M. 1947, 3-802.4.

80-5-106. Revision of classifications — hearing — order. The department may, with the written approval of the director of the agricultural experiment station recorded before or within 10 days after a public hearing, revise the groups and classifications of noxious weed seeds provided in this part to prevent or diminish the distribution and occurrence of noxious weed seeds in this state. Notice of the hearing shall be published by the department, at least 30 days before the day set for the hearing, in three newspapers of general circulation in the state and shall be mailed to all associations of seed dealers in the state who are organized on a statewide basis. A revision or modification made as a result of the hearing shall be adopted by a written order of the department, shall be countersigned "approved" by the director of the agricultural experiment station, and shall plainly state the revisions or modifications and any qualifications, exceptions, or conditions pertaining to the revisions or modifications.

History: En. Sec. 5, Ch. 361, L. 1969; Sec. 3-821, R.C.M. 1947; amd. and redes. 3-802.5 by Sec. 46, Ch. 218, L. 1974; R.C.M. 1947, 3-802.5.

80-5-107. Exemptions. Agricultural seeds or mixtures of same shall be exempt from the provisions of this part:

(1) when possessed, exposed for sale, or sold for food purposes only;

(2) when sold to merchants or dealers to be recleaned before being sold or offered for sale for seeding purposes;

(3) when in store for the purpose of recleaning or not possessed, sold, or offered for sale for seeding purposes within the state.

History: En. Sec. 3, Ch. 12, L. 1913; re-en. Sec. 3595, R.C.M. 1921; re-en. Sec. 3595, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1939; amd. Sec. 6, Ch. 361, L. 1969; R.C.M. 1947, 3-803.

80-5-108. Inspection by grain and seed laboratory — reports. The grain and seed laboratory of the agricultural experiment station shall inspect, analyze, and test seeds sold or offered or exposed for sale in this state at a time and place and to the extent the director of the agricultural experiment station and the department determine. The laboratory shall report to the department all violations as they appear. It shall also annually before September 1 make a report to the department of all tests made and the results, which may be published by the department. The laboratory and the department shall have free access at all reasonable hours to all premises or structures to make examination of any seeds or any other premises of a warehouse, elevator, or railway company. Upon tendering payment at the current value, the department may take any sample of seeds.

History: En. Sec. 5, Ch. 12, L. 1913; re-en. Sec. 3597, R.C.M. 1921; re-en. Sec. 3597, R.C.M. 1935; amd. Sec. 6, Ch. 88, L. 1939; amd. Sec. 3, Ch. 155, L. 1951; amd. Sec. 42, Ch. 218, L. 1974; amd. Sec. 13, Ch. 13, L. 1977; R.C.M. 1947, 3-805(1).

80-5-109. Testing of submitted samples. The grain and seed laboratory shall analyze any seed samples taken from seed lots offered for sale in the state and submitted by the department.

History: En. 3-806.1 by Sec. 4, Ch. 390, L. 1973; R.C.M. 1947, 3-806.1.

80-5-110. Laboratory testing of samples — fees. Any citizen of this state may request the grain and seed laboratory to examine, analyze, and test samples of seed upon payment of the fee and compliance with rules governing the submission of seed samples for such service. Samples of seed analyzed and tested shall be charged for at rates determined jointly by the department and the director of the grain and seed laboratory. All fees collected by the grain and seed laboratory shall be used to defray the expenses incurred by the laboratory under 80-5-101 through 80-5-113.

History: En. Sec. 7, Ch. 12, L. 1913; re-en. Sec. 3599, R.C.M. 1921; re-en. Sec. 3599, R.C.M. 1935; amd. Sec. 2, Ch. 192, L. 1937; amd. Sec. 8, Ch. 88, L. 1939; amd. Sec. 1, Ch. 85, L. 1949; amd. Sec. 4, Ch. 155, L. 1951; amd. Sec. 5, Ch. 390, L. 1973; amd. Sec. 14, Ch. 13, L. 1977; R.C.M. 1947, 3-807.

80-5-111. Certificate of test presumptive evidence. The certificate of the grain and seed laboratory, giving results of any examinations, analyses, or tests of any seed samples made under the authority of the department, is presumptive evidence of the correctness of the facts stated in it.

History: En. Sec. 8, Ch. 12, L. 1913; re-en. Sec. 3600, R.C.M. 1921; re-en. Sec. 3600, R.C.M. 1935; amd. Sec. 9, Ch. 88, L. 1939; amd. Sec. 6, Ch. 390, L. 1973; R.C.M. 1947, 3-808.

80-5-112. Enforcement — rules. The department shall administer and enforce 80-5-101 through 80-5-113. For that purpose, the department may adopt rules. The department may issue and enforce a written or printed “stop sale” order to the owner or custodian of any lot of agricultural seed which the department finds in violation of 80-5-101 through 80-5-113. The order shall prohibit further sale of the seed until the department has evidence that the law has been complied with. The seed may not be confiscated or destroyed. Upon proper correction, by reprocessing, labeling, or otherwise, and when, in the judgment of the department, the requirements of 80-5-101 through 80-5-113 have been met, the stop sale order shall be lifted and the seed may be sold. The department shall adopt all necessary rules relating to the agricultural experiment station’s duties under 80-5-101 through 80-5-113.

History: En. Sec. 5, Ch. 12, L. 1913; re-en. Sec. 3597, R.C.M. 1921; re-en. Sec. 3597, R.C.M. 1935; amd. Sec. 6, Ch. 88, L. 1939; amd. Sec. 3, Ch. 155, L. 1951; amd. Sec. 42, Ch. 218, L. 1974; amd. Sec. 13, Ch. 13, L. 1977; R.C.M. 1947, 3-805(2).

80-5-113. Penalty. Any person, firm, or corporation which sells or offers or exposes for sale or distribution in the state any agricultural seeds for seeding purposes without complying with the requirements of 80-5-101 through 80-5-113 is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $300 plus costs of such prosecution and upon conviction of the second or any subsequent offense shall be fined not less than $500 or more than $1,000 plus costs of such prosecution.

History: En. Sec. 4, Ch. 12, L. 1913; re-en. Sec. 3596, R.C.M. 1921; amd. Sec. 2, Ch. 110, L. 1929; re-en. Sec. 3596, R.C.M. 1935; amd. Sec. 5, Ch. 88, L. 1939; amd. Sec. 3, Ch. 390, L. 1973; amd. Sec. 12, Ch. 13, L. 1977; R.C.M. 1947, 3-804.

Part 2

Seed Dealers, Processors, and Warehousemen

80-5-201. Definitions. When used in this part, the following definitions apply:

(1) "Agricultural seed" means the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds and includes lawn seeds and mixtures of seeds.

(2) "Bin-run seed sales from one farmer to another farmer" means buyer beware.

(3) "Montana certified seed grower" means a member of an authorized Montana seed certifying agency who has consented to produce seed under the rules for certified classes of seed, with respect to the maintenance of genetic purity and variety identity, set forth by the certifying agency.

(4) "Person" means any individual, firm, partnership, corporation, or association.

(5) "Public agricultural seed warehouse" means any warehouse or structure in which agricultural seed is received from the public for storage, assembling, or cleaning.

(6) "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed from seed by any kind of cleaning or processing.

(7) "Seed buyer" means any person engaged in the business of buying agricultural seed for shipment, cleaning, processing, or resale and who does not own, control, or operate a public agricultural seed warehouse. Any individual employed by a seed buyer is not included in this term.

(8) "Seed dealer" means any person who offers for sale, sells, or barters agricultural seeds to the ultimate consumer.

(9) "Seed labeler" means any person affixing labels to agricultural seeds with his name and address listed as required in 80-5-102 when such seed is distributed in Montana.

(10) "Seed processing plant" means any place of business that repackages, cleans, blends, treats, or otherwise manipulates agricultural seeds.

(11) "Seed warehouseman" means any person owning, controlling, or operating a public agricultural seed warehouse.

History: En. Sec. 1, Ch. 442, L. 1973; amd. Sec. 1, Ch. 315, L. 1977; R.C.M. 1947, 3-310(2) thru (12).

80-5-202. Licensing — issuance — application — fee — bonding — insurance. (1) All seed processing plants, seed labelers, seed buyers, and public agricultural seed warehouses shall obtain a license from the department before doing business in this state; however, a Montana certified seed grower, when processing or labeling certified seed from his own production, is not required to be licensed under this section. Bin-run seed sales from one farmer to another are exempt from this part.

(2) All licenses are issued on a fiscal-year basis and expire on June 30 of each year. A license may cover any or as many as all four activities: processing plant, seed labeler, seed buyer, and public agricultural seed warehouse.

(3) Application for license is made in a manner and on forms provided by the department. A nonresident shall file a written power of attorney designating the secretary of state as his agent, and the power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of Montana over the nonresident applicant. A nonresident who has a duly appointed resident agent upon whom process may be served as provided by law is not required to designate the secretary of state as his

agent. The department shall be furnished with a certified copy of the designation of the secretary of state or of a resident agent.

(4) The department may establish by rule minimum standards for equipment and handling procedures for facilities to be licensed and may carry out inspections during normal business hours to determine that these standards are being adhered to.

(5) Each license shall cost no more than $50 a year. The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this part.

(6) Failure on the part of a licensee to comply with the rules issued under the authority of this section is sufficient cause for cancellation of a license by the department, provided the licensee is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies.

(7) The department may by rule establish bonding and insurance requirements for each class of license.

History: En. Sec. 2, Ch. 442, L. 1973; amd. Sec. 2, Ch. 315, L. 1977; R.C.M. 1947, 3-311; amd. Sec. 7, Ch. 20, L. 1979.

80-5-203. Dealer's license — exception — fee — application — violation. (1) No person may distribute seed without obtaining a dealer's license from the department for each place of business. No license is required of a person who distributes seeds only in sealed packages of less than 10 pounds, packed by a licensed seed labeler and bearing his name and address. Each dealer's license shall cost no more than $20 a year and expires on June 30 of each year. The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this part. Any licensed processing plant, seed labeler, seed buyer, or public agricultural seed warehouse may obtain a dealer's license without additional fee.

(2) Application for a dealer's license shall be made in a manner and on forms provided by the department. Such forms shall require among other things the name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds.

(3) Violation of provisions of this section or the distribution of agricultural seeds not legally labeled constitutes adequate grounds for canceling a license or denying a license to a dealer.

History: En. Sec. 4, Ch. 442, L. 1973; amd. Sec. 3, Ch. 315, L. 1977; R.C.M. 1947, 3-313.

80-5-204. Screenings — restrictions on movements. All screenings whether from seed processing plants or other sources represent both a valuable and potentially hazardous product. Their movements are restricted as follows:

(1) The viability of prohibited noxious weed seed as defined in 80-5-101(4)(b) shall be destroyed before screenings are utilized in feed or in any other way in which they may propagate their kind. However, if these screenings are sold for feed, it shall be the responsibility of the feed buyer to haul under a tarp cover or other tight container until the provisions of this part are met.

(2) The department has authority to issue rules to restrict or exempt from restriction the holding and movement of screenings when the public interest is served by so doing.

History: En. Sec. 3, Ch. 442, L. 1973; R.C.M. 1947, 3-312.

80-5-205. Violations. The following acts caused within the state of Montana are prohibited:

(1) the failure or refusal to obtain a license as required in 80-5-202 and 80-5-203;

(2) the misbranding or mislabeling of agricultural seeds;

(3) the violation or failure to comply with rules issued under the authority of this part.

History: En. Sec. 5, Ch. 442, L. 1973; R.C.M. 1947, 3-314.

80-5-206. Rules — promulgated by department. The department is authorized to promulgate necessary rules as authorized by this part. All rules are to be promulgated in accordance with procedures as set forth in the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 442, L. 1973; R.C.M. 1947, 3-315; amd. Sec. 8, Ch. 20, L. 1979.

80-5-207. Violation — cancellation of license — enforcement proceedings. (1) The department may cancel any license issued by it when the provisions of this part have been violated by the holder of the license.

(2) Any person convicted of violating the provisions of this part or rules promulgated under the authority of this part is guilty of a misdemeanor and shall be fined not less than $100 or more than $300 for the first violation and not less than $500 or more than $1,000 for each subsequent violation.

(3) Nothing in this part shall be construed as requiring the department or its representatives to report violations of this part when it believes that the public interest will be best served by a suitable notice of warning.

(4) It is the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(5) The department is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this part or any rule promulgated under this part notwithstanding the existence of other remedies at law. An injunction is issued without bond.

(6) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this part may within 30 days bring action in the district court of the county or any county where the alleged violation occurred for trial of the issues bearing upon such act.

History: En. Sec. 7, Ch. 442, L. 1973; amd. Sec. 4, Ch. 315, L. 1977; R.C.M. 1947, 3-316.

80-5-208. Deposit of funds. All money collected under the provisions of this part shall be deposited to the general fund.

History: En. Sec. 8, Ch. 442, L. 1973; R.C.M. 1947, 3-317.

Part 3

Certification

80-5-301. Application of sections. A person, firm, association, or corporation which issues, uses, or circulates any certificate, advertisement, tag, seal, poster, letterhead, marking, circular, or written or printed representation or description pertaining to seeds or plant parts intended for propagation or sale or sold or offered for sale in which the words "Montana state certified", "state certified", "Montana certified", or similar words or phrases are used or employed is subject to 80-5-301 through 80-5-305.

History: En. Sec. 1, Ch. 11, L. 1951; amd. Sec. 43, Ch. 218, L. 1974; R.C.M. 1947, 3-809.

80-5-302. Rules by Montana state university — certification agencies. Every person, firm, association, or corporation subject to the provisions of 80-5-301 through 80-5-305 shall observe, perform, or comply with all rules and standards for seed certification established or specified by Montana state university, hereafter referred to as the university, as to what crops grown or to be grown in Montana shall be eligible for certification hereunder, as to the conduct of such certification, either by said university directly or by agents or agencies authorized by it for the purpose, and as to standards, requirements, and forms of and for certification hereunder; provided, however, that not more than one such agent or agency for certification shall be designated for any one specified crop. No certification within the provisions of 80-5-301 through 80-5-305 shall be made or authorized except by or through said university.

History: En. Sec. 2, Ch. 11, L. 1951; amd. Sec. 7, Ch. 390, L. 1973; R.C.M. 1947, 3-810.

80-5-303. Certification work on self-supporting basis. Certification work, whether conducted by said university or by an agency designated by it, shall be on a self-supporting basis and not for financial profit.

History: En. Sec. 3, Ch. 11, L. 1951; amd. Sec. 8, Ch. 390, L. 1973; R.C.M. 1947, 3-811.

80-5-304. Withholding certification. The said university or its designated agency or agencies may withhold certification from any grower of seeds or plant parts who is engaged in or attempting to engage in any dishonest practices for the purpose of evading the provisions of 80-5-301 through 80-5-305, including standards and rules laid down by the said university or its designated agency or agencies to cover certification.

History: En. Sec. 5, Ch. 11, L. 1951; amd. Sec. 10, Ch. 390, L. 1973; R.C.M. 1947, 3-813.

80-5-305. Unlawful use of certification — penalty. A person, firm, association, or corporation may not issue, make, use, or circulate any document purporting to be or represented as a seed or plant part certification certificate, represent seeds or plant parts as certified, or use the terms "Montana state certified", "state certified", "Montana certified", or similar words or phrases, without the authority and approval of the university. A person, firm, association, or corporation who violates 80-5-301 through 80-5-305 is guilty of a misdemeanor and shall be fined not less than $100 or more than $500 for each offense.

History: En. Sec. 6, Ch. 11, L. 1951; amd. Sec. 11, Ch. 390, L. 1973; amd. Sec. 44, Ch. 218, L. 1974; R.C.M. 1947, 3-814.

CHAPTER 6

APICULTURE

Part 1 — Registration

Section

80-6-101. Definitions.
80-6-102. Registration.

80-6-103. Changing locations — enlarging or selling apiaries.
80-6-104. Apiaries — termination of rights — abandonment.
80-6-105. Registration fees.

Part 2 — Inspection and Certification

80-6-201. Apiaries — powers and duties of the department.
80-6-202. Inspection of bees or used beekeeping equipment transported interstate.
80-6-203. Importation of bees in combless packages.

Part 3 — General Provisions

80-6-301. Orders effective until reversed or modified by court.
80-6-302. Disposition of fees.
80-6-303. Penalty.

Part 1

Registration

80-6-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Apiary" means a place where one or more colonies of bees are kept or one or more hives containing honeycombs or bee combs are kept.

(2) "Bee diseases" means American or European foulbrood, sacbrood, bee paralysis, or other disease or abnormal condition of egg, larval, pupal, or adult stages of bees.

(3) "Bees" means any stage of the bees in the genus Apis.

(4) "Colony" means the hive and all equipment used in connection with the hive.

(5) "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives and includes containers of honey and wax which may be used in an apiary or in transporting bees and their products and apiary supplies.

(6) "Hive" means a frame hive, box hive, box, barrel, log gum, skep, or other receptacle or container or a part of a container, natural or artificial, which may be used as a domicile for bees.

(7) "Persons" means individuals, associations, partnerships, or corporations.

(8) "Queen apiary" means an apiary or premises in which queen bees are reared or kept for sale or gift.

History: En. Sec. 1, Ch. 79, L. 1947; amd. Sec. 1, Ch. 475, L. 1973; Sec. 82-805, R.C.M. 1947; amd. and redes. 3-3101 by Sec. 128, Ch. 218, L. 1974; R.C.M. 1947, 3-3101.

80-6-102. Registration. (1) A person who owns or possesses an apiary in the state shall, before April 1 each year, register the apiary.

(2) Applications shall be made to the department for registration application blanks.

(3) Registration application blanks shall be furnished by the department. The applicant shall provide the following information:

(a) a statement of the name and place of residence;

(b) the number of colonies of bees, hives, and equipment in the apiary;

(c) the location of the apiary, setting forth specifically the location by sectional division to the nearest quarter section, and the township and range and, if within the corporate limits of a town or city, the number of the lot and block in the town or city;

(d) the name of the owner, renter, or occupant of the land on which the apiary is located;

(e) the date when the apiary was first established; and

(f) other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and beekeeping industry.

(4) Upon receipt of the application and payment of the fees prescribed, the department may issue a certificate of registration for an apiary, setting forth the name of the owner, the specific location, and the number of colonies of bees or size of the apiary authorized under the registration.

(5) In issuing certificates of registration for apiaries, if there is a conflict between applicants with respect to location, the department shall give preference to the applicant having the oldest continuous registered apiary.

(6) Certificates of registration may not be issued for new apiaries which are within such close proximity to established registered apiaries that there is or may be danger of spread of disease or that the proximity will or may interfere with the proper feeding and honey flow of established apiaries.

(7) Before registering new apiaries, the department shall give at least 10 days' notice by certified mail to all registered apiarists likely to be affected by the proposed new apiary so that any party affected may file written protests with the department against registering the new apiary. If a written protest is filed, the department may require a hearing. Notice of the time and place of the hearing shall be given all parties interested by certified mail at least 10 days before the date set for the hearing.

(8) Suitable evidence of registration furnished by the department shall be posted by the apiary registrant in a conspicuous place at or near the apiary. If an owner has more than one apiary, suitable evidence of registration furnished by the department shall be posted at each apiary.

(9) A registration not applied for by April 1 of each year is a late registration and incurs an added penalty of 10% of the regular registration fee. Registrants who fail to apply for reregistration by April 1 of each year shall be notified of their delinquency by the department. The notification shall be by certified mail and is sufficient if deposited in a United States post office or mail box and addressed to the registrant at his last address appearing in the apiary registration files of the department at least 10 days before May 1. The registration of an apiary for which application for reregistration is not made by May 1 of each year is forfeited and all rights under the registration terminate.

History: **En. Sec. 3, Ch. 79, L. 1947; amd. Sec. 2, Ch. 28, L. 1953; amd. Sec. 3, Ch. 475, L. 1973; Sec. 82-807, R.C.M. 1947; amd. and redes. 3-3103 by Sec. 130, Ch. 218, L. 1974; amd. Sec. 2, Ch. 25, L. 1977; R.C.M. 1947, 3-3103.**

80-6-103. Changing locations — enlarging or selling apiaries. (1) An owner of an established registered apiary may not change the location of the apiary without first receiving from the department authorization to establish the new apiary. In making the application, he shall specify the location of the apiary with the same particularity as in the application for original registration. If the new apiary is not used within 60 days after a new certificate of registration is issued, the certificate of registration lapses and all rights under the registration terminate. Registrations for new apiaries may not be issued for greater areas than the applicant can show are reasonably necessary for his needs consistent with good beekeeping practice.

(2) A registered apiary may be sold or transferred to a purchaser subject to this chapter, if all bees and equipment on the apiary are sold to the purchaser.

(3) A person enlarging an apiary so as to exceed the number of hives authorized under a certificate of registration is subject to the penalties in 80-6-303.

History: **En. 3-3104 by Sec. 131, Ch. 218, L. 1974; amd. Sec. 3, Ch. 25, L. 1977; R.C.M. 1947, 3-3104.**

80-6-104. Apiaries — termination of rights — abandonment. (1) The registration of an apiary which is not stocked with bees during at least part of the normal build-up or honey-producing season is forfeited and all rights under the certificate of registration terminate.

(2) An apiary not regularly attended in accordance with good beekeeping practice, which comprises a hazard or threat to disease control in the beekeeping industry or which by reason of its physical condition or construction cannot be inspected, may be considered an abandoned apiary and may be seized by the department. Any diseased equipment or equipment which by reason of its physical condition or construction cannot be inspected may be burned, and the remainder may be sold at public auction. Proceeds, after the cost of the sale is deducted, shall be returned to the former owner or his estate. Before burning or selling any equipment, the department shall give the owner or person in charge a written notice at least 5 days before the burning or sale. The notice shall be given by certified mail or personal service upon the owner or person in charge of the property. If the owner or person in charge cannot be located, a certified letter sent to the owner's last address registered with the department is sufficient notice under this section.

History: **En. 3-3105 by Sec. 132, Ch. 218, L. 1974; amd. Sec. 4, Ch. 25, L. 1977; R.C.M. 1947, 3-3105.**

80-6-105. Registration fees. (1) Each year before a certificate of registration may be issued for an apiary, the owner or applicant for the certificate shall pay the department a registration fee in accordance with the following schedule of fees for the total number of colonies owned or possessed:

1 to 10 colonies of bees	$ 5.00
11 to 50 colonies	10.00
51 to 200 colonies	20.00
201 to 300 colonies	30.00
301 to 500 colonies	40.00
501 to 1,000 colonies	60.00
1,001 to 2,000 colonies	70.00

2,001 to 3,000 colonies	90.00
3,001 to 4,000 colonies	110.00
4,001 to 5,000 colonies	130.00
5,001 colonies and upward	150.00

(2) If, after registration, additional or new colonies are authorized for a registered apiary, fees shall be paid by the registrant in accordance with the schedule in subsection (1) for the total number of colonies for that year.

History: En. Sec. 4, Ch. 79, L. 1947; amd. Sec. 1, Ch. 175, L. 1973; amd. Sec. 4, Ch. 475, L. 1973; Sec. 82-808, R.C.M. 1947; amd. and redes. 3-3106 by Sec. 133, Ch. 218, L. 1974; amd. Sec. 5, Ch. 25, L. 1977; R.C.M. 1947, 3-3106; amd. Sec. 2, Ch. 300, L. 1979.

Part 2

Inspection and Certification

80-6-201. Apiaries — powers and duties of the department. (1) To prevent the spread of contagious and infectious disease among bees and apiaries, the department may:

(a) order the transfer of colonies of bees from hives or containers which cannot be properly examined for brood or other diseases to other hives or containers;

(b) order disinfection of any bee, beehive, brood comb, or any other equipment which is infected or contaminated and burn any infected or contaminated bee, beehive, brood comb, or any other equipment if, in its judgment, disinfection will not remove the infection or contamination. Before burning any property, the department shall give the owner or person in charge a written notice at least 5 days before the date on which the property will be burned. The notice shall be given by certified mail or personal service upon the owner or person in charge of the property.

(c) quarantine any apiary where foulbrood or any contagious or infectious diseases are present and, during the quarantine, prevent the removal from the apiary of any bees or equipment except under a special permit issued by the department permitting the removal under conditions prescribed by it. A person may not sell or offer for sale any apiary, bees, or equipment which are under quarantine unless a permit authorizing the sale or removal is issued by the department. Written notice of quarantine shall be posted by the department, owner, or person in charge at the quarantined apiary at a conspicuous place, and a copy shall be personally served or sent by certified mail to the owner of the apiary or person in charge. The quarantine continues in effect until it is ordered removed and a copy of the removal order served in the same manner.

(d) inspect any apiary, hives, equipment, or premises for the presence of disease;

(e) promulgate and enforce rules adopted pursuant to this chapter.

(2) Any person failing to comply with a rule, order, or provision of a quarantine pursuant to this section is subject to penalties provided for in 80-6-303.

History: En. Sec. 2, Ch. 79, L. 1947; amd. Sec. 1, Ch. 28, L. 1953; amd. Sec. 2, Ch. 475, L. 1973; Sec. 82-806, R.C.M. 1947; amd. and redes. 3-3102 by Sec. 129, Ch. 218, L. 1974; amd. Sec. 1, Ch. 25, L. 1977; R.C.M. 1947, 3-3102.

80-6-202. Inspection of bees or used beekeeping equipment transported interstate. (1) A person may not transport or bring into the state any used beekeeping equipment or containers, including honey to be extracted, unless it is certified and duly marked as disease-free by an official responsible for apiary regulations of the state from which it is being moved. The department shall be advised in advance of the date of entry and the destination of the material. Used equipment transported into the state may be quarantined by the department, in accordance with 80-6-201(1)(c), from the time it enters the state until it has been in use while under quarantine for a minimum of 90 days and at least until the following July 1. The beekeeping materials are also subject to quarantine as provided in this section. The department may also inspect and certify as disease-free bees or beekeeping equipment which is to be transported from Montana to a state which requires an inspection in the state of origin.

(2) The costs of making the inspections provided for in subsection (1) shall be paid in advance by the owner of the bees or equipment and shall include a per diem pursuant to Title 2, chapter 18, part 5, necessary traveling expenses, and a fee of $20 for the issuance of a certificate of health. If inspection by an official of any other state is considered insufficient for the protection of the Montana bee industry by the department, the department shall so state by public statement. Importation of beekeeping materials, including honey for extracting, from that other state shall be denied unless the materials or honey are first inspected by the department and there is obtained from it a certificate of inspection showing that the materials or honey are apparently free from contagious or infectious disease. The costs of making the inspection shall be paid by the person requesting it, and inspection may be made at any point outside this state convenient to the person making the inspection. The department may require that the costs of making the inspection be paid in advance, and the costs shall include per diem pursuant to Title 2, chapter 18, part 5, necessary traveling expenses, and a fee of $20 for the issuance of the certificate of inspection.

History: En. Sec. 5, Ch. 79, L. 1947; amd. Sec. 3, Ch. 28, L. 1953; amd. Sec. 5, Ch. 475, L. 1973; Sec. 82-809, R.C.M. 1947; amd. and redes. 3-3107 by Sec. 134, Ch. 218, L. 1974; amd. Sec. 6, Ch. 25, L. 1977; R.C.M. 1947, 3-3107; amd. Sec. 4, Ch. 300, L. 1979.

80-6-203. Importation of bees in combless packages. A person or common carrier may not transport or bring into this state bees in combless packages unless they are accompanied by a certificate of health issued by the official inspector of the state or country from which they came.

History: En. Sec. 6, Ch. 79, L. 1947; Sec. 82-810, R.C.M. 1947; amd. and redes. 3-3108 by Sec. 135, Ch. 218, L. 1974; R.C.M. 1947, 3-3108.

Part 3

General Provisions

80-6-301. Orders effective until reversed or modified by court. An order or rule adopted by the department, including an order refusing a permit for the establishment of a new apiary location, is effective until reversed or modified by a final decision of a court of competent jurisdiction and while such action is pending, as defined in 25-1-103. An injunction or other process or writ may not be issued by a court restraining enforcement until that final determination.

History: En. Sec. 10, Ch. 79, L. 1947; amd. Sec. 7, Ch. 475, L. 1973; Sec. 82-814, R.C.M. 1947; amd. and redes. 3-3112 by Sec. 139, Ch. 218, L. 1974; amd. Sec. 23, Ch. 13, L. 1977; R.C.M. 1947, 3-3112.

80-6-302. Disposition of fees. Registration and inspection fees collected under this chapter shall be transmitted by the department to the state treasurer, who shall deposit the moneys to the credit of the general fund.

History: En. Sec. 7, Ch. 79, L. 1947; amd. Sec. 6, Ch. 475, L. 1973; Sec. 82-811, R.C.M. 1947; amd. and redes. 3-3109 by Sec. 136, Ch. 218, L. 1974; R.C.M. 1947, 3-3109.

80-6-303. Penalty. A person violating this chapter is guilty of a misdemeanor and shall be fined not less than $25 or more than $500 or imprisoned in the county jail not exceeding 1 year or both fined and imprisoned.

History: En. Sec. 8, Ch. 79, L. 1947; Sec. 82-812, R.C.M. 1947; amd. and redes. 3-3110 by Sec. 137, Ch. 218, L. 1974; R.C.M. 1947, 3-3110.

CHAPTER 7

DISEASE, PEST, AND WEED CONTROL

Part 1 — Control of Diseases and Insects in Nurseries

Section
80-7-101. Definitions.
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Part 1

Control of Diseases and Insects in Nurseries

80-7-101. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Nursery stock" means botanically classified hardy perennial or biennial plants, trees, shrubs, vines, either domesticated or wild plants, cuttings, grafts, scions, buds, bulbs, rhizomes, or roots of them, and other plants and plant parts for or capable of propagation. The term does not include vegetable, field, or flower seed or corms and tubers.

(2) "Person" means a person, firm, or corporation.

(3) "Seasonal nurseryman" means a person engaged in the business of selling, dealing in, or importing into the state for sale or distribution any nursery stock which is for sale only during certain growing seasons and whose place of business is open only during certain growing seasons and not continuously throughout the year.

History: **En. 3-1201.1 by Sec. 53, Ch. 218, L. 1974; amd. Sec. 1, Ch. 155, L. 1975; R.C.M. 1947, 3-1201.1.**

80-7-102. License required of nurserymen — application and payment of fees. (1) A person, before engaging in the business of selling, dealing in, or importing nursery stock into this state for sale or distribution or acting as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock or soliciting orders for the purchase of nursery stock, must obtain a license for each place of business from the department. A person may not falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock.

(2) The department shall provide application forms for prospective licensees. Applications for licenses may be made at any time before engaging in business, except seasonal nurserymen must make application at least 30 days in advance of doing business in this state.

(3) Licenses shall be in the name of the person licensed and shall indicate the purpose for which issued and the name and location of the nursery or place of business of the nurseryman or dealer licensed or represented by an agent, salesman, or solicitor. Licenses, except seasonal nurserymen's licenses, shall bear the date of issue and expire July 1 next following the date of issue. Seasonal nurserymen's licenses shall bear the date of issue and expire on the date provided on the license by the department.

(4) The license fee is $30 a year for a general nursery, dealing in all kinds of nursery products; $20 a year for a nursery dealing in small fruits, ornamental shrubs, bulbs, and perennials; $10 a year for a nursery dealing in bulbs and perennials only; and $30 a year for seasonal nurserymen. Agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's licenses, free of charge, upon the request of the licensee.

History: En. Sec. 1, Ch. 220, L. 1943; amd. Sec. 1, Ch. 121, L. 1963; amd. Sec. 63, Ch. 218, L. 1974; amd. Sec. 1, Ch. 151, L. 1975; R.C.M. 1947, 3-1212; amd. Sec. 3, Ch. 300, L. 1979.

80-7-103. Renewal of license. A licensed nurseryman or dealer in nursery stock who has complied with this part is entitled, upon the expiration of his license, to have the license renewed. The license shall be renewed upon payment of the proper fee.

History: En. Sec. 2, Ch. 220, L. 1943; amd. Sec. 64, Ch. 218, L. 1974; R.C.M. 1947, 3-1213.

80-7-104. Grounds for refusal or revocation of license. The department may refuse to issue a license or it may revoke a license under this part when:

(1) the person has been adjudged bankrupt, insolvent, or guilty of fraud or deceit by a court of competent jurisdiction; or

(2) a verified complaint is made to the department that a licensee has failed to comply with this part or the horticulture laws.

History: En. Sec. 3, Ch. 220, L. 1943; amd. Sec. 65, Ch. 218, L. 1974; R.C.M. 1947, 3-1214.

80-7-105 through 80-7-110 reserved.

80-7-111. Sales of nursery stock — inspection — fee. (1) A person who sells or delivers any nursery stock not previously inspected under this part shall notify the department of agriculture of the sale or delivery. The department, after receiving the notice, shall inspect the nursery stock as soon as practicable. If the nursery stock is free from diseases and pests, the department shall so certify and shall attach a certificate of inspection to each lot or bill of nursery stock inspected.

(2) The department may designate certain places as quarantine stations where all nursery stock brought into the state shall be inspected and disinfected.

(3) If any nursery stock is diseased or infested with any of the pests mentioned in 80-7-204, the department shall order its disinfection or destruction together with all boxes, wrapping, or packing. If the department has ordered the destruction of any nursery stock, it shall notify the owner who may appeal to the director of agriculture before the destruction. The director's decision concerning the disposition of the nursery stock is final.

(4) The department shall fix by rule, after a hearing, the charges for disinfecting, fumigating, and inspecting nursery stock. Notice of the hearing on the proposed charges shall be published once in three newspapers of general circulation in this state.

(5) The charge for inspecting each carload of nursery stock is $10 or a proportionate sum fixed by the department for less than carload lots.

(6) The department shall collect all fees required by this section and may not give a certificate of inspection until the fees are paid.

History: En. Sec. 43, Ch. 216, L. 1921; re-en. Sec. 3614, R.C.M. 1921; re-en. Sec. 3614, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1939; amd. Sec. 1, Ch. 89, L. 1945; amd. Sec. 52, Ch. 218, L. 1974; R.C.M. 1947, 3-1201.

80-7-112. Request for inspector's services — costs — certificate of inspection. Any person may request, upon the payment of actual costs to the department, the services of a horticultural inspector to inspect and certify plant products. Subsequent to inspection such horticultural inspector may issue to the person a certificate of inspection signed by him covering any plant product in compliance with rules of the department.

History: En. 3-1201.2 by Sec. 1, Ch. 150, L. 1975; R.C.M. 1947, 3-1201.2.

80-7-113. Duty to notify department of infection. The owner or manager of an orchard, nursery, storeroom, packing house, or other place where horticultural products or supplies are kept or handled which becomes diseased or infested with any injurious insect or pest, immediately upon discovery of the existence of the disease or pest, shall notify the department. The owner or manager, at his expense, shall comply with the instructions of the department for the eradication of the disease or pest.

History: En. Sec. 1926, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; re-en. Sec. 3616, R.C.M. 1921; re-en. Sec. 3616, R.C.M. 1935; amd. Sec. 55, Ch. 218, L. 1974; R.C.M. 1947, 3-1203.

80-7-114. Removal of infected trees — assessment of costs. (1) If a person owning any orchard or nursery stock infected or infested with any injurious insect pest or disease and which becomes a menace to the agricultural or fruit industry or a menace to ornamental trees, shrubs, plants, or vines fails to comply with the instructions of the department for the destruction or control of the injurious insect pest or disease or the destruction of the infested or infected orchard or nursery stock within the time specified by the department, the department may condemn, remove, or destroy the orchard or nursery stock or treat it with a proper remedy.

(2) If an owner fails to pay the cost of the removal, treatment, or destruction within 30 days after notice has been mailed to the owner at his last known post-office address, the cost shall become a lien on the land of the

owner and shall be added by the county treasurer to the taxes upon the property and collected as other taxes.

History: En. Sec. 45, Ch. 216, L. 1921; re-en. Sec. 3617, R.C.M. 1921; re-en. Sec. 3617, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1939; amd. Sec. 56, Ch. 218, L. 1974; R.C.M. 1947, 3-1204.

80-7-115. Prohibition against delivery of uninspected nursery stock. A person may not receive or deliver any nursery stock unless a certificate issued by the department is attached to the nursery stock.

History: En. Sec. 46, Ch. 216, L. 1921; re-en. Sec. 3618, R.C.M. 1921; re-en. Sec. 3618, R.C.M. 1935; amd. Sec. 57, Ch. 218, L. 1974; R.C.M. 1947, 3-1205.

80-7-116. Notice to department of shipment of nursery stock. A person licensed to do business under this part shall notify the department of his intention to ship nursery stock not previously inspected in accordance with this part to any point in this state. The notice shall contain the name and address of both the consignor and consignee, the list of the goods to be shipped, the freight or express office at which the goods are to be delivered, and the name or title of the transportation company from whom the consignee is to receive the goods. The notice shall be mailed at least 5 days before the day of shipment.

History: En. Sec. 48, Ch. 215, L. 1921; re-en. Sec. 3620, R.C.M. 1921; re-en. Sec. 3620, R.C.M. 1935; Sec. 58, Ch. 218, L. 1974; R.C.M. 1947, 3-1206.

80-7-117. Receiving uninspected nursery stock prohibited. A person who receives and accepts any nursery stock that has not been inspected by the department shall, before using or disposing of the nursery stock, first notify the department and give it an opportunity to examine and, if necessary, fumigate the nursery stock.

History: En. Sec. 49, Ch. 216, L. 1921; re-en. Sec. 3621, R.C.M. 1921; re-en. Sec. 3621, R.C.M. 1935; amd. Sec. 59, Ch. 218, L. 1974; R.C.M. 1947, 3-1207.

80-7-118. Right to hold nursery stock for inspection. No person is liable to any other person for any damage to any nursery stock caused by holding it to await the certificate of the department.

History: En. Sec. 1929, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; re-en. Sec. 3623, R.C.M. 1921; re-en. Sec. 3623, R.C.M. 1935; amd. Sec. 60, Ch. 218, L. 1974; amd. Sec. 2, Ch. 155, L. 1975; R.C.M. 1947, 3-1209.

80-7-119. Inspection of Montana nursery stock — certificate. (1) Before it is packed for delivery, all nursery stock grown or growing in this state and used for filling orders shall be inspected by the department. The nursery stock shall be disinfected by fumigating or other method when considered necessary by the department. If the nursery stock is clean and free from insects and fungi pests, the department shall issue a certificate to the nurseryman. The certificate shall entitle the nurseryman to use that stock for filling orders for current delivery. The certificate shall be furnished at a price not exceeding 40 cents per hundred.

(2) Nurseries shall give the department 5 days' notice of the time when the stock will be ready for inspection.

History: En. Sec. 50, Ch. 216, L. 1921; re-en. Sec. 3624, R.C.M. 1921; re-en. Sec. 3624, R.C.M. 1935; amd. Sec. 61, Ch. 218, L. 1974; R.C.M. 1947, 3-1210.

80-7-120. Duplicate copies of orders for nursery stock required. (1) A nurseryman or dealer in nursery stock and a salesman, solicitor, and agent shall give to a person ordering nursery stock a duplicate copy of the order which shall show:

(a) the name and location of the nursery where the stock was grown;

(b) the name of the nurseryman from whom ordered and the name of the solicitor, salesman, or agent taking the order;

(c) the date of the order and when delivery is to be made;

(d) the number, name, age, and price of the variety of tree or plant ordered.

(2) Upon shipment into this state from any point outside this state of any nursery stock by a person not licensed to do business in this state, the person receiving the nursery stock shall have it inspected by the department and shall pay an inspector's fee of 10% of the invoice price of the shipment. The minimum fee for the inspection shall be 50 cents and the actual and necessary traveling expenses of the inspector. No inspection fees may be collected in excess of the regular inspection fees where the stock is shipped to a person licensed under this part.

History: En. Sec. 5, Ch. 220, L. 1943; amd. Sec. 66, Ch. 218, L. 1974; R.C.M. 1947, 3-1216.

80-7-121 through 80-7-130 reserved.

80-7-131. Department rules and orders. Every person in charge or control of a nursery, orchard, storeroom, packinghouse, or other place where horticultural products or supplies are handled or kept shall comply with the rules of the department and shall disinfect or destroy diseased or infected nursery stock or other horticultural supplies or products when ordered to do so by the department.

History: En. Sec. 44, Ch. 216, L. 1921; re-en. Sec. 3615, R.C.M. 1921; re-en. Sec. 3615, R.C.M. 1935; amd. Sec. 54, Ch. 218, L. 1974; R.C.M. 1947, 3-1202.

80-7-132. Cooperation — agreements with other governmental agencies. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, and agencies of the federal government in order to carry out the purpose and provisions of this part.

History: En. 3-1219 by Sec. 1, Ch. 149, L. 1975; R.C.M. 1947, 3-1219.

80-7-133. Acts made unlawful — penalty. (1) It is unlawful for any person to:

(a) falsely represent or misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale;

(b) falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in or came from a certain nursery or locality, when in fact such nursery stock was grown in or came from another location or nursery;

(c) deceive or defraud any person in the sale of any nursery stock by substituting inferior or different varieties or ages from those ordered; or

(d) willfully or intentionally bring into this state, offer for sale or distribution within this state or ship, sell, or deliver upon any sale any nursery stock that is infected or infested with any disease or insect dangerous to the horticultural interests of the state.

(2) In case of such misrepresentation, false representation, deceit, fraud, or substitution, such person is subject to punishment as provided by 80-7-134 and is liable to the person, firm, or corporation damaged or injured thereby, to the extent of all damages sustained, to be recovered in a civil action in any court of competent jurisdiction.

History: En. Sec. 4, Ch. 220, L. 1943; amd. Sec. 15, Ch. 13, L. 1977; R.C.M. 1947, 3-1215.

80-7-134. Penalty for violation. A person violating this part is guilty of a misdemeanor and shall be fined not less than $25 or more than $300.

History: En. Sec. 51, Ch. 216, L. 1911; re-en. Sec. 3625, R.C.M. 1921; re-en. Sec. 3625, R.C.M. 1935; Sec. 3-1211, R.C.M. 1947; amd. and redes. 3-1218 by Sec. 62, Ch. 218, L. 1974; R.C.M. 1947, 3-1218.

Part 2

Fruit and Vegetable Pest and Disease Control

80-7-201. Destruction of fruit pests — use of crates. (1) The department of agriculture may adopt rules to prevent the spread of contagious disease among fruit and fruit trees; to prevent, treat, and destroy fruit pests and diseases of fruit and fruit trees; and to disinfect grafts, scions, and orchard debris, empty fruit boxes or packages, or other suspected material or transportable articles dangerous to orchards, fruit, and fruit trees. The rules shall be circulated in printed form by the department among fruit growers and fruit dealers of the state, shall be published at least 10 days in two newspapers of general circulation in the state, and shall be posted in three conspicuous places in each county in the state, one of which shall be at the county courthouse.

(2) No person may use a second time any crate, box, barrel, package, or wrapping which previously contained nursery stock. However, at the written request of a nurseryman, the department may permit boxes or packages which previously contained nursery stock to be thoroughly fumigated in the presence of an inspector, at the expense of the nurseryman. The department shall give a receipt and mark the box or package. Otherwise, the box or package must be destroyed in its entirety, and possession of the crate, box, barrel, package, or wrapping by a person or dealer, other than the consignee, is prima facie evidence of a violation of this part.

(3) The department may seize and destroy by burning, without breaking, an infected or unlawfully used crate, box, barrel, package, or wrapping wherever found and prosecute the violator.

History: En. Sec. 39, Ch. 216, L. 1921; re-en. Sec. 3610, R.C.M. 1921; re-en. Sec. 3610, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1963; amd. Sec. 49, Ch. 218, L. 1974; R.C.M. 1947, 3-1103.

80-7-202. Inspectors — appointment and duties. The department shall appoint inspectors of fruit pests, who shall be selected with reference to their knowledge and practical experience in horticulture. Inspectors shall visit the nurseries, orchards, stores, packinghouses, warehouses, and other places where horticultural products and fruits are kept and shall see that the rules of the department and the laws of the state pertaining to the disinfection of fruits, trees, plants, grafts, orchard debris, and empty fruit boxes and other material are complied with. Inspectors shall have access at all times to all orchards or places where horticultural products or supplies are kept or handled. They shall enforce the rules of the department and may order the destruction and disinfection of infected trees, plants, fruits, or horticultural products or supplies.

History: En. Sec. 40, Ch. 216, L. 1921; re-en. Sec. 3611, R.C.M. 1921; re-en. Sec. 3611, R.C.M. 1935; amd. Sec. 50, Ch. 218, L. 1974; R.C.M. 1947, 3-1104.

80-7-203. Investigation of source, control, and destruction of insect pests. The department may investigate the source, control, and destruction of insect pests and fungus and bacterial diseases of orchards, trees, shrubs, plants, or nursery stock in this state.

History: En. Sec. 42, Ch. 216, L. 1921; re-en. Sec. 3613, R.C.M. 1921; re-en. Sec. 3613, R.C.M. 1935; amd. Sec. 51, Ch. 218, L. 1974; R.C.M. 1947, 3-1106.

80-7-204. Importation and sale of infected fruits and vegetables prohibited. A person may not import into this state, sell, barter, or otherwise dispose of, offer for sale, or possess for sale or barter any fruit or vegetable which is or has been infested with San Jose scale or the larvae of the coddling moth or other insect pest or disease dangerous to agriculture. The fact that any fruit or vegetable bears the mark of any such insect or is worm-eaten by the larvae of the coddling moth or shows the effect of disease is conclusive evidence that the fruit or vegetable is infected. Infected fruit or vegetables may be condemned and confiscated by the department. Nothing in this section prevents the growers of the infected fruit or vegetable from manufacturing it into a byproduct or selling and shipping it to a byproduct factory after obtaining a written permit from the department.

History: En. Sec. 1935, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; amd. Sec. 1, Ch. 99, L. 1915; re-en. Sec. 3626, R.C.M. 1921; re-en. Sec. 3626, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1939; amd. Sec. 67, Ch. 218, L. 1974; R.C.M. 1947, 3-1301.

80-7-205. Quarantine of orchards. (1) The department may quarantine an orchard or place where fruits are grown or kept that is infested with an injurious disease or insect pest. The department may adopt rules governing quarantines and regulating or restricting the use of quarantined fruits upon the premises or the shipment or disposition of them as necessary to prevent the spreading of disease or diseases or insect pests.

(2) A person may not ship or dispose of diseased or infested fruit or fruit products in violation of the order of the department.

History: En. Sec. 52, Ch. 216, L. 1921; re-en. Sec. 3627, R.C.M. 1921; re-en. Sec. 3627, R.C.M. 1935; amd. Sec. 68, Ch. 218, L. 1974; R.C.M. 1947, 3-1302.

80-7-206. Expenses of eradicating orchard diseases — collection as tax. (1) When, under the direction or rules of the department, any money is spent by it to eradicate any disease or insect pest from an orchard or other place where fruits are grown or kept, the department shall notify the owner of the orchard or premises in writing of the amount spent plus an additional charge of 25% of the amount spent. The notice shall be mailed to the last known address of the owner.

(2) If the owner fails to pay the amount spent by the department plus the additional charge of 25% within 30 days of the time the notice is sent, the department shall file a verified statement with the county treasurer where the money was spent. The statement shall set forth the amount spent

plus the additional charge of 25%, together with the correct description of the property on which the money was spent as it appears on the assessment roll of the county.

(3) The county treasurer shall add the amount contained in the statement to the taxes upon the property and shall collect them in the manner provided for collection of state and county taxes.

(4) The county treasurer in any county where any money is collected as provided in subsection (3) shall, on or before February 1 each year, remit the amount to the state treasurer, who shall deposit same to the credit of the general fund of the state.

History: (1) thru (3)En. Sec. 53, Ch. 216, L. 1921; re-en. Sec. 3628, R.C.M. 1921; re-en. Sec. 3628, R.C.M. 1935; amd. Sec. 69, Ch. 218, L. 1974; Sec. 3-1303, R.C.M. 1947; (4)En. Sec. 54, Ch. 216, L. 1921; re-en. Sec. 3629, R.C.M. 1921; re-en. Sec. 3629, R.C.M. 1935; Sec. 3-1304, R.C.M. 1947; R.C.M. 1947, 3-1303, 3-1304.

80-7-207. Quarantine against insect pests and plant diseases in other states. If the governor believes that any pest, gypsy moth, browntail moth, Mediterranean fruit fly, potato wart, potato canker, black scab, potato ellworm, pea weevil, alfalfa weevil, alfalfa blight, flax canker, flax wilt, or other fruit or plant disease or insect pest dangerous or inimical to the horticultural or the agricultural industry exists in certain localities in another state, territory, or country or that conditions exist that render domestic horticultural stock or agricultural crops or plants likely to become diseased, he must by proclamation designate the localities. The governor shall prohibit the importation from those localities of any tubers, plants, nursery stock, fruit, or seeds or agricultural crops, plants, or seeds likely to introduce or spread infection, contagion, or insect pests into the state, except under restrictions he, after consulting with the department and the cooperative extension service, considers proper.

History: En. Sec. 1, Ch. 61, L. 1913; re-en. Sec. 3631, R.C.M. 1921; re-en. Sec. 3631, R.C.M. 1935; amd. Sec. 71, Ch. 218, L. 1974; R.C.M. 1947, 3-1306.

80-7-208. Governor to establish quarantine against insect pests. Whenever the governor of this state has good reason to believe that any pest, gypsy moth, browntail moth, potato wart, potato canker, black scab, potato ellworm, pea weevil, alfalfa weevil, alfalfa blight, flax canker, flax wilt, or other plant disease or insect pest, dangerous or inimical to the agricultural or horticultural industry, exists within any county or locality within the state, it shall be specifically understood that he has authority to quarantine any county, district, locality, or ranch and it shall be his duty to prescribe and enforce such rules as may be necessary to prevent the movement of any designated articles or materials whatever across the boundaries of such quarantined counties, districts, localities, or ranches and for the control and eradication of such pests or diseases.

History: En. Sec. 2, Ch. 61, L. 1913; amd. Sec. 1, Ch. 89, L. 1921; re-en. Sec. 3632, R.C.M. 1921; re-en. Sec. 3632, R.C.M. 1935; R.C.M. 1947, 3-1307.

80-7-209. Receiving products from infected districts prohibited. After publication of the governor's proclamation, a person may not knowingly receive any tubers, plants, nursery stock, fruit, seeds, or agricultural crops, plants, or weeds from a prohibited district and a person may not transport, convey, sell, or use them in this state. A person who violates this section is subject to the penalty provided in 80-7-210 and is liable for the damages caused to a person by the importation or transportation.

History: **En. Sec. 3, Ch. 61, L. 1913; re-en. Sec. 3633, R.C.M. 1921; re-en. Sec. 3633, R.C.M. 1935; amd. Sec. 72, Ch. 218, L. 1974; R.C.M. 1947, 3-1308.**

80-7-210. Penalty. A person who violates this [chapter] is guilty of a misdemeanor and shall be fined not less than $25 or more than $300.

History: **En. 3-1309 by Sec. 73, Ch. 218, L. 1974; R.C.M. 1947, 3-1309.**

Part 3

Barberry Control

80-7-301. Harmful barberry defined. (1) The term "harmful barberry", as used in this part, shall be construed to apply to any species of Berberis and, as hereinafter provided for, to Mahonia which are susceptible to infection by Puccinia graminis, commonly called blackstem rust of grain, but not including Japanese barberry (B. thunbergii), which does not propagate the rust.

(2) The department may apply this part to species of Mahonia when in its judgment the necessity arises.

History: **(1)En. Sec. 3, Ch. 40, L. 1919; re-en. Sec. 3605, R.C.M. 1921; re-en. Sec. 3605, R.C.M. 1935; Sec. 3-1003, R.C.M. 1947; (2)En. Sec. 4, Ch. 40, L. 1919; re-en. Sec. 3606, R.C.M. 1921; re-en. Sec. 3606, R.C.M. 1935; amd. Sec. 48, Ch. 218, L. 1974; Sec. 3-1004, R.C.M. 1947; R.C.M. 1947, 3-1003, 3-1004.**

80-7-302. Harmful barberry — traffic in or permitting to exist unlawful. It shall be unlawful for any person, firm, or corporation to sell, offer for sale, barter, give away, exchange, deliver, ship, transport, receive, or accept for shipment or transportation, plant, or permit to exist on his or its premises in the state of Montana, any plant of the harmful barberry.

History: **En. Sec. 1, Ch. 40, L. 1919; re-en. Sec. 3603, R.C.M. 1921; re-en. Sec. 3603, R.C.M. 1935; R.C.M. 1947, 3-1001.**

80-7-303. Duty of department to destroy — proceedings. (1) The department shall destroy harmful barberry plants found growing anywhere in the state. If the owner of the land on which the plants are found fails to destroy the plants within 10 days after receiving a written notice to that effect from the department, the department shall destroy the plants.

(2) The department shall then make out a statement in duplicate of the actual cost and expense incurred in destroying the plants. One copy of the statement shall be transmitted to the landowner, and the other shall be filed with the county treasurer where the land is situated.

(3) The treasurer shall place the amount indicated in the statement on the tax duplicate against the land. That amount shall be collected in the same manner and at the same time as taxes are collected. When collected, the amount shall be paid by the treasurer to the department, which shall send it to the state treasurer to be credited to the general fund.

History: **En. Sec. 2, Ch. 40, L. 1919; re-en. Sec. 3604, R.C.M. 1921; re-en. Sec. 3604, R.C.M. 1935; amd. Sec. 47, Ch. 218, L. 1974; R.C.M. 1947, 3-1002.**

80-7-304. Violation — penalty. Any person, firm, or corporation which shall violate any of the provisions of this part shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined any sum not less than $10 and not more than $25 for each offense.

History: En. Sec. 5, Ch. 40, L. 1919; re-en. Sec. 3607, R.C.M. 1921; re-en. Sec. 3607, R.C.M. 1935; R.C.M. 1947, 3-1005.

Part 4 reserved

Part 5

Crop Insect Detection and Management

80-7-501. Definitions. As used in this part, the following definitions apply:

(1) "Alternative control program" means a system of controlling insect pest populations through biological or other means not involving toxic chemicals.

(2) "Cropland" means land used for the production of food and forage, including the headlands, ditches, and rights-of-way adjacent to such land.

(3) "Cropland spraying program" means the application of chemical or other substances to croplands for the purpose of preventing or destroying insect pests.

(4) "Emergency" means a serious insect pest infestation that meets the conditions of 10-3-311.

(5) "Infestation" means that a pest exists in such numbers, under certain conditions, and at certain times as to destroy or substantially damage or threaten to destroy livestock or other agricultural crops.

(6) "Insect pest" includes the grasshopper, cutworm, pale western cutworm, armyworm, chinch bug, and any other insect or arthropod generally recognized as a destroyer of grain, hay, range, and horticulture crops.

History: En. 3-3501 by Sec. 1, Ch. 433, L. 1975; amd. Sec. 27, Ch. 13, L. 1977; amd. Sec. 1, Ch. 362, L. 1977; R.C.M. 1947, 3-3501(1) thru (4), (6), (7).

80-7-502. Insect detection, surveillance, and control programs. The department may:

(1) employ permanent and seasonal personnel to administer this part;

(2) survey for and maintain surveillance of insect pests during appropriate seasons and enter upon any croplands in the course of conducting such surveillance;

(3) provide insect pest management services to particular agricultural commodity groups for the resolution of special or unusual insect pest problems;

(4) determine or assist a county to determine, upon investigation, whether a serious infestation exists or threatens to occur within a county;

(5) declare that an insect pest infestation constitutes a serious infestation;

(6) operate, contract for, or assist a county to obtain spraying or other appropriate services to counteract an actual or threatening serious infestation, having first determined that any person contracting to supply such services is properly equipped to apply substances designated and approved by the department;

(7) conduct, cooperate in, or coordinate upon request by any affected county, insect pest management services for serious pest infestations in one or more counties;

(8) assist counties, upon request, to coordinate county insect pest management programs in contiguous counties.

History: En. 3-3502 by Sec. 2, Ch. 433, L. 1975; amd. Sec. 2, Ch. 362, L. 1977; R.C.M. 1947, 3-3502.

80-7-503. Duties of department. The department shall:

(1) develop and publish a list of pesticides approved for control of insect pests;

(2) develop and publish technical guidelines on techniques of controlling insect pests;

(3) notify a county of its survey results and state whether the infestation is normal or serious;

(4) review and comment on or review and approve all county agricultural insect pest management plans as provided by local government statutes and consider whether the plan conforms to the technical guidelines of the department and whether implementation of the plan will probably counteract the condition of insect pest infestation in a timely and proper manner;

(5) consider whether an alternative control program would be as efficient as spraying on a ratio of total costs to total benefits and provide the county with a summary of its findings prior to conducting or approving any cropland spraying program. If the alternative control program is considered adequate, the department may conduct or approve such a program.

History: En. 3-3503 by Sec. 3, Ch. 433, L. 1975; amd. Sec. 3, Ch. 362, L. 1977; R.C.M. 1947, 3-3503.

80-7-504. Financing of control program. (1) One-third of the costs of a cropland spraying program or alternative program conducted by the state shall be paid by the state. Prior to the implementation of any state or county control program, the department and the governing body of any county for which the program is proposed shall enter into an interlocal or management agreement on the maximum amount of moneys each shall appropriate or provide toward the proposed program. If either party does not sign and approve the agreement, the program may not be conducted.

(2) Individual farm and ranch landowners may formally petition by written affidavit protesting their inclusion within the proposed cropland spraying program. The department or local governing body shall refrain from spraying any land petitioned to be excluded. Such excluded land remains subject to assessment under 80-7-505. The governing body of any county for which a control program is intended shall proceed as provided by local government statutes.

(3) If the department conducts the program, it shall pay all costs of the program. The county shall pay its share and the landowner's share as provided in 80-7-505 to the department for deposit in the appropriate fund.

(4) If the county conducts the program, it shall pay all costs of the program including its share. The department shall pay one-third of the costs of the cropland spraying program from moneys appropriated for that purpose

to the county in which the program was conducted. The county treasurer shall collect the landowner's special assessment as provided in 80-7-505.

History: **En. 3-3504 by Sec. 4, Ch. 433, L. 1975; amd. Sec. 4, Ch. 362, L. 1977; R.C.M. 1947, 3-3504.**

80-7-505. Computation and collection of assessments on landowners. Each owner of cropland benefited under a cropland spraying program is liable for such portion of the landowner's share of the program costs as his cropland is a portion of all cropland within the boundaries of the program. The county treasurer shall compute each landowner's liability and mail a special assessment therefor to each owner or occupier of land within the boundaries of the program. Unless otherwise mutually agreed upon, this assessment is due and payable within 32 days of mailing or 30 days of receipt if receipt is shown to be more than 2 days after mailing. A delinquent assessment is a lien upon the land assessed.

History: **En. 3-3505 by Sec. 5, Ch. 433, L. 1975; amd. Sec. 5, Ch. 362, L. 1977; R.C.M. 1947, 3-3505.**

80-7-506. Rangeland control programs. The department may enter into agreements with the United States department of agriculture for cooperative programs to control insect pest infestations on rangeland and to share the costs of such programs whenever funds have been appropriated and are available for that purpose.

History: **En. 3-3506 by Sec. 6, Ch. 433, L. 1975; amd. Sec. 6, Ch. 362, L. 1977; R.C.M. 1947, 3-3506.**

80-7-507. Administrative rules. The department may adopt rules necessary to carry out the intent of this part.

History: **En. 3-3507 by Sec. 7, Ch. 362, L. 1977; R.C.M. 1947, 3-3507.**

80-7-508. Duties of the cooperative extension service. The cooperative extension service within the department of education shall conduct investigations pertaining to insects and other arthropods affecting plants and animals. When an injurious infestation of an insect or other arthropod occurs in any part of the state, the authorized employees of the cooperative extension service shall go to the scene of the infestation, shall determine the extent and seriousness of the infestation, and make public the best remedies to be employed.

History: **En. Sec. 2, Ch. 75, L. 1967; Sec. 82-804.2, R.C.M. 1947; amd. and redes. 75-8806 by Sec. 127, Ch. 218, L. 1974; R.C.M. 1947, 75-8806.**

Part 6 reserved

Part 7

Weed Control

80-7-701. Embargo against introduction of noxious weed seed from other states. If the department believes that movements of grain, plants, seed, tubers, nursery stock, hay, straw, fruit, or other materials containing noxious weed seed or plants dangerous or inimical to the horticultural or agricultural industries are about to be introduced into the state, it may advise the governor. The governor shall, by proclamation, declare an embargo against the importation or shipment of the grain, plants, tubers, nursery stock, seed, hay, straw, fruit, or other materials into the state, except under restrictions established in this part and provided in the rules adopted by the department.

History: En. Sec. 4, Ch. 195, L. 1939; amd. Sec. 1, Ch. 44, L. 1965; amd. Sec. 117, Ch. 218, L. 1974; R.C.M. 1947, 16-1708.

80-7-702. Rules for enforcement of interstate embargo. The department of agriculture shall adopt all necessary rules in the enforcement of an embargo proclaimed as provided in 80-7-701. The department in adopting the rules may provide for the establishment of inspection stations, the appointment of inspectors, the establishment of the inspection fees, the issuance of certificates, the methods of transporting and packaging, and other rules and procedures necessary to carry out 80-7-701 through 80-7-704.

History: En. Sec. 2, Ch. 44, L. 1965; amd. Sec. 118, Ch. 218, L. 1974; R.C.M. 1947, 16-1708.1.

80-7-703. Violations of interstate embargo — penalty. Any person who refuses to obey an order of an appointed inspector or willfully disobeys the provisions of 80-7-701 through 80-7-704 shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 and not more than $500.

History: En. Sec. 3, Ch. 44, L. 1965; R.C.M. 1947, 16-1708.2.

80-7-704. Disposition of fines and inspection fees. All fines levied as provided in 80-7-703 and all fees collected from inspections shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the department for the purpose of administering and enforcing 80-7-701 through 80-7-704.

History: En. Sec. 4, Ch. 44, L. 1965; amd. Sec. 119, Ch. 218, L. 1974; R.C.M. 1947, 16-1708.3.

80-7-705 through 80-7-710 reserved.

80-7-711. Technical assistance. The department is authorized to provide technical assistance and services to local governments, agricultural producers, and the general public on the management and control of noxious plants. This assistance and service may include:

(1) development, compilation, and reporting of information and records on noxious plant infestations in every county;

(2) information and data on the location of noxious plants and acres infested per county and major infestations of watersheds and geographical regions of the state;

(3) a determination of the economic and environmental impact of noxious plants on Montana and its citizens;

(4) providing technical assistance to various governmental units and citizens on managing long-term noxious plant control programs;

(5) delineation and recommendation of areas in the state where management programs or certain management tools should not be utilized because of economic or environmental considerations;

(6) information on the restrictions and proper use of pesticides and other management techniques;

(7) publishing of model quarantine standards for counties desiring to provide a quarantine program for noxious plants, plant parts, and seed transported in the county; and

(8) cooperation and coordination of activities with any government agency, private industry, or citizen.

History: **En. 16-1724 by Sec. 1, Ch. 466, L. 1977; R.C.M. 1947, 16-1724.**

80-7-712. Funding of noxious plant management programs. (1) The department may make every effort to obtain federal funds under 43 U.S.C. 1242 to implement management of noxious plants on federal lands in cooperation with any federal agency and the local government body responsible for noxious plant management. These federal funds shall be directly disbursed to local governments authorized to conduct noxious plant management programs. The department may require individual or multiple local government units wishing to apply for federal funds to make proper application for the funds following the management program, budget guidelines, and policies of the department, and the requirements of 43 U.S.C. 1241 through 1243. The department shall request 3% of the total federal funds received per year to cover the complete cost of administering, monitoring, and auditing the expenditure of these federal funds.

(2) The department may cooperate in and coordinate the planning and disbursement of these funds with federal, state, and local agencies responsible for management of noxious plants.

(3) The department may directly expend or provide federal or state funds to local governments to manage or eradicate new noxious plant infestations invading federal or state lands within the state.

(4) The department may hold a public hearing in the specific locale requesting funding prior to granting the federal funds. The department may determine if there are any special requirements or restrictions that should be incorporated into the management program prior to its implementation.

History: **En. 16-1725 by Sec. 2, Ch. 466, L. 1977; R.C.M. 1947, 16-1725.**

80-7-713. Reports. The department may prepare a biennial report on the status of noxious plants and their management in Montana. Reports may be submitted to the governor and legislature and other such groups and organizations as the department considers necessary.

History: **En. 16-1726 by Sec. 3, Ch. 466, L. 1977; R.C.M. 1947, 16-1726.**

80-7-714. Rules. The department may adopt rules and policies necessary to implement 80-7-711 through 80-7-713 pursuant to the Montana Administrative Procedure Act.

History: **En. 16-1727 by Sec. 4, Ch. 466, L. 1977; R.C.M. 1947, 16-1727.**

CHAPTER 8

PESTICIDES

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Part 1

General Administration

80-8-101. Short title. This chapter may be cited as the "Montana Pesticides Act".

History: En. Sec. 1, Ch. 403, L. 1971; R.C.M. 1947, 27-213.

80-8-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Active ingredient" means:

(a) in the case of a pesticide, other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) in the case of a plant regulator, an ingredient which acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce;

(c) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(d) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(2) "Adulterated" applies to a pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold or if any substance has been substituted wholly or in part for the pesticide or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

(4) "Applicator" means a person who applies pesticides by any method.

(5) "Beneficial insects" means those insects which, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(6) "Commercial applicator" means a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

(7) "Commercial operator" means a person who applies pesticides under the supervision of a commercial applicator.

(8) "Crop" means a food intended for human or animal consumption or a fiber product.

(9) "Dealer" means a person who sells, wholesales, offers or exposes for sale, exchanges, barters, or gives away within this state any pesticide except those pesticides which are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes, and lawn.

(10) "Defoliant" means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(11) "Desiccant" means a substance or mixture of substances for artificially accelerating the drying of plant tissue.

(12) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests but not equipment used for the application of pesticides.

(13) "Environment" means the soil, air, water, plants, and animals.

(14) "Equipment" means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(15) "Farm applicator" means a person applying pesticides to his own crops or land.

(16) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living man or other animals.

(17) "Fungicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any fungus.

(18) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(19) "Inert ingredient" means an ingredient which is not an active ingredient.

(20) "Ingredient statement" means either:

(a) a statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) a statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection (20)(a) of this section applies if the preparation is highly toxic to man, determined as provided in 80-8-105; and if the pesticide contains arsenic in any form, the ingredient statement shall also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(21) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(22) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(23) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or to its immediate container and any outside container or wrapper of any retail package of the pesticide or device.

(24) "Labeling" means all labels and other written, printed, or graphic matter:

(a) upon the pesticide or device or any of its containers or wrappers;

(b) accompanying the pesticide or device at any time;

(c) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States environmental protection agency; departments of agriculture, interior, or health, education, and welfare; state experiment stations; state agricultural colleges; or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(25) "Misbranded" applies:

(a) to a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients which is false or misleading;

(b) to a pesticide if:

(i) it is an imitation of or is offered for sale under the name of another pesticide;

(ii) its labeling bears any reference to registration under this chapter;

(iii) the labeling accompanying it does not contain instructions for use necessary and, if complied with, adequate for the protection of the public;

(iv) the label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living man or undue hazard to the environment;

(v) the label of the retail package which is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) any word, statement, or other information required to appear on the labeling is not prominently placed on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms rendering it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living men or other vertebrate animals or vegetation, except weeds, to which it is applied or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to man or other vertebrate animals or vegetation to which it is applied or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(26) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(27) "Nematodes", "nemas", or "eelworms" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle and inhabiting soil, water, animals, plants, or plant parts.

(28) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(29) "Pest" includes any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered a pest or which the department declares a pest.

(30) "Pesticide" means any:

(a) substance or mixture of substances, including any living organism or any product derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department declares a pest;

(b) substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(c) other substances intended for that use named by the department by a rule adopted by it.

(31) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(32) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(33) "Registrant" means the person registering any pesticide or device under the provisions of this chapter.

(34) "Restricted-use pesticide" means any pesticide, including highly toxic pesticides, which the department has found and determined, subsequent to

a hearing, to be injurious when used in accordance with registration, label, directions, and cautions to persons, beneficial insects, animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

(35) "Retailer" means any person who sells, offers or exposes for sale, exchanges, barters, or gives away within this state any pesticide for home, yard, lawn, and garden use, in quantities or concentrations as determined by the department of agriculture.

(36) "Weed" means any plant or part of the plant which grows where not wanted.

History: En. Sec. 4, Ch. 403, L. 1971; amd. Sec. 1, Ch. 447, L. 1973; amd. Sec. 120, Ch. 218, L. 1974; amd. Sec. 1, Ch. 462, L. 1977; R.C.M. 1947, 27-216.

80-8-103. Purpose. The control of pesticides and their use is essential for the protection of man and his environment. Pesticides are currently considered valuable and necessary to provide sufficient quantity of quality foods and for the protection of humans from vectorborne diseases. However, the protection of man and his essential needs—water, air, food, animals, vegetation, pollinating insects, and shelter from pesticides which are potentially dangerous—is in the public interest now and in the future. Therefore, it is deemed necessary to provide for the control of pesticides.

History: En. Sec. 2, Ch. 403, L. 1971; R.C.M. 1947, 27-214.

80-8-104. Administration. This chapter shall be administered by the department.

History: En. Sec. 3, Ch. 403, L. 1971; R.C.M. 1947, 27-215.

80-8-105. Rules. (1) The department may adopt by reference without a public hearing regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

(a) registration, application, use, or restricting use, prohibiting use, offering or exposing for sale any pesticide;

(b) determining whether pesticides are highly toxic to man;

(c) determining standards of coloring or discoloring for pesticides and subjecting pesticides to the requirements of 80-8-202;

(d) licensing commercial applicators, operators, and dealers, establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the review of the records by the department's authorized agent and the submission of the records to the department upon written request;

(e) issuing farm applicator special-use permits and the maintenance and submission of records by farm applicators issued special-use permits;

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) operating and maintaining equipment used by applicators;

(h) developing examinations which shall be held periodically throughout the state;

(i) establishing the form and content of all applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) revoking licenses and permits;

(l) registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used;

(m) registering pesticide-fertilizer and other chemical blends or, instead of registration, establishing licensing, inspection, and fees for blending plants;

(n) establishing registration procedures for devices, with a fee not to exceed $5 per type of device, specifying classes of devices to be registered and providing for additional requirements.

(3) (a) Whenever the department finds that those rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and shall encompass all reasonable factors which the department considers necessary to prevent damage or injury to:

(i) persons, animals, or pollinating insects from the effect of drift or careless application;

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

(v) fish and other aquatic life.

(b) In issuing the rules, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) If the department finds that an emergency exists which requires immediate action with regard to the registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary orders or rules to protect the public health, welfare, and safety. An order or rule issued under this subsection is effective for the period prescribed by the Administrative Procedure Act. If the department determines that the emergency order or rule should remain in effect, a public hearing under 80-8-106 shall be held within the above period to determine whether the order or rule should be adopted by the department.

(5) All rules and orders issued by the department shall be in writing, shall be entered in full in books to be kept by the department for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department shall include and be based upon written findings of fact. A copy

of any rule or order certified by the department shall be received in evidence in all courts of this state with the same effect as the original.

History: En. Sec. 22, Ch. 403, L. 1971; amd. Sec. 123, Ch. 218, L. 1974; amd. Sec. 12, Ch. 462, L. 1977; R.C.M. 1947, 27-234.

80-8-106. Administrative procedures. The administration of this chapter and all rulemaking and hearing functions under this chapter shall be conducted in accordance with the Administrative Procedure Act.

History: En. Sec. 23, Ch. 403, L. 1971; amd. Sec. 124, Ch. 218, L. 1974; amd. Sec. 13, Ch. 462, L. 1977; R.C.M. 1947, 27-235.

80-8-107. Public information. The department as it deems proper may, alone or in cooperation with other state or federal agencies, publish information regarding aspects of the use and application sections or registration sections of this chapter. This information cannot disclose operations of selling, production, or use of pesticides by any person.

History: En. Sec. 27, Ch. 403, L. 1971; R.C.M. 1947, 27-239.

80-8-108. Advisory council. (1) The director of agriculture may appoint an advisory council to study and make recommendations on special pesticide problems in the state. The council shall consist of individuals representing, equally, controlled industry, agriculture, health, and wildlife. Governmental personnel, university personnel not included, may not be represented on the council. Governmental personnel shall meet with the council in an advisory capacity when requested by the council. The council may not exceed 12 members. The director of agriculture shall establish the time period in which the council shall exist. The time period may not exceed 2 years. The department of agriculture shall provide the necessary administrative, secretarial, and any other essential items to the council.

(2) Each member of the council shall receive as compensation for his services the sum of $25 per day for each day actually spent in the performance of his duties and shall be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(3) The council may request that the department hold a public hearing to assist it in gathering factual data and information on the special problems assigned it.

History: En. Sec. 28, Ch. 403, L. 1971; amd. Sec. 126, Ch. 218, L. 1974; amd. Sec. 14, Ch. 439, L. 1975; amd. Sec. 14, Ch. 462, L. 1977; R.C.M. 1947, 27-240.

80-8-109. Educational programs. The department in cooperation with other state and federal agencies shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides as to correct methods of formulating, applying, storing, disposing of, handling, and transporting pesticides.

History: En. Sec. 29, Ch. 403, L. 1971; R.C.M. 1947, 27-241.

80-8-110. Cooperation with other agencies. (1) The department of agriculture may cooperate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this chapter, securing uniformity of rules, and entering into reciprocal licensing and certification agreements with other states.

(2) The department of agriculture and the department of health and environmental sciences shall enter into a memorandum of agreement concerning the inspection, regulation, and responsibilities of persons or activities that may be involved in the management, disposal, storage, transportation, treatment, recycling, or recovery of hazardous wastes and the disposal of solid wastes.

(3) For the purpose of this section, "solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. Solid waste does not mean municipal sewage, industrial wastewater affluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable wood byproducts.

(4) For the purpose of this section, "hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to those which are toxic, radioactive, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes.

History: En. Sec. 30, Ch. 403, L. 1971; amd. Sec. 15, Ch. 462, L. 1977; R.C.M. 1947, 27-242.

Part 2

Registration and Licensing

80-8-201. Registration. (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state shall be registered with the department. The registration shall be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all approved pesticides and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement including:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is so registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(3) Any pesticide imported into this state which is subject to the provisions of any federal act providing for the registration of pesticides and has been registered under the provisions of a federal act shall be registered in the state. However, the state may restrict the use and application of the pesticide by type of applicator, time, and place and may establish special registrations of pesticides as outlined in subsection (8) of this section and 80-8-105(3). The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of $15 for each pesticide registered. A registration fee is not required to register an experimental use permit. Fees collected shall be deposited in the state treasury to the credit of the general fund.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the article warrants the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of 80-8-202, it shall register the article.

(6) If it does not appear to the department that the article warrants the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with this chapter, it shall notify the applicant of the manner in which the article, labeling, or other material required to be submitted fails to comply with the chapter so as to afford the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the article. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling comply with this chapter. When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may appeal the department's decision.

(7) Registration is not required in the case of a pesticide shipped from one plant in this state to another plant in this state by the same person.

(8) (a) The departments of health and environmental sciences, agriculture, and fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The departments shall utilize the same requirements and standards for reviewing registrations as established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted thereunder. The department of agriculture shall provide the departments of health and environmental sciences and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department of agriculture's proposed action on the application. The departments of health and environmental sciences and fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application.

If the departments of health and environmental sciences, agriculture, and fish, wildlife, and parks are in agreement with the proposed registration, the department of agriculture shall issue the registration.

(b) The department of agriculture shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department of agriculture shall issue the registration.

(c) The registrant applying for registration shall be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, health and environmental sciences, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration shall be accepted by the departments and implemented by the department of agriculture.

History: En. Sec. 5, Ch. 403, L. 1971; amd. Sec. 121, Ch. 218, L. 1974; amd. Sec. 2, Ch. 462, L. 1977; R.C.M. 1947, 27-217; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 230, L. 1979.

80-8-202. Prohibited acts. (1) It is unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce between points within this state any of the following:

(a) any pesticide which has not been registered pursuant to the provisions of 80-8-201 or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration or if the composition of a pesticide differs from its composition as represented in connection with its registration or if registration or reregistration has been refused, revoked, canceled, or suspended. The department of agriculture may allow a change in the labeling or formula of a pesticide within a registration period without requiring reregistration of the product when such change does not adversely affect the product for its intended use and if proper application therefor is made.

(b) any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) the name and address of the manufacturer, registrant, or person for whom manufactured;

(ii) the trade and chemical name, brand, or trademark under which said article is sold;

(iii) the net weight or measure of the content, subject to such reasonable variations as the department may permit;

(c) any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in 80-8-105, unless the label shall bear, in addition to any other matter required by this chapter:

(i) the skull and crossbones;

(ii) the word "poison" prominently in red on a background of distinctly contrasting color;

(iii) a statement of an antidote for the pesticide;

(d) the pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored, as provided by regulations issued in accordance with this chapter, or any other white powder pesticide which the department, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the environment and the feasibility of such coloration or discoloration, shall by regulations require to be distinctly colored or discolored, unless it has been so colored or discolored. The department may exempt any pesticide to the extent that it is intended for a particular use from the coloring or discoloring required or authorized by this section if it determines that such coloring or discoloring for such use is not necessary for the protection of the public health and the environment.

(e) any pesticide which is adulterated or misbranded, or any device which is misbranded.

(2) It is unlawful for any person to:

(a) detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or rules promulgated hereunder or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this chapter;

(b) use for his own advantage or reveal, other than to the department or proper officials or employees of the state or the courts of this state in response to a subpoena, to physicians or to veterinarians or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of 80-8-201.

History: **En. Sec. 6, Ch. 403, L. 1971; R.C.M. 1947, 27-218; amd. Sec. 9, Ch. 20, L. 1979.**

80-8-203. Commercial applicator. (1) It shall be unlawful for any person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. The application shall be accompanied by a fee of $15. Applicators applying for a dealer's license under this chapter shall be required to pay only a $10 licensing fee for the dealer's license. The provisions of this section shall not apply to any person employed only to operate any equipment used for the application of any pesticide and in which the person has no financial interest or other control over such apparatus other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators shall be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided for under 80-8-205.

(3) Veterinarians licensed as provided in Title 37, chapter 18, part 3, shall not be required to be licensed to apply nonrestricted pesticides, provided

that these veterinarians shall register with the department each year; provided further that the veterinarians shall be required to meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules.

History: En. Sec. 9, Ch. 403, L. 1971; amd. Sec. 2, Ch. 447, L. 1973; amd. Sec. 4, Ch. 462, L. 1977; R.C.M. 1947, 27-221; amd. Sec. 2, Ch. 230, L. 1979.

80-8-204. Application for applicator's license. (1) Application for a pesticide applicator's license provided for in 80-8-203 shall be made annually to the department before applying pesticides in any calendar year, provided that pesticide applicators applying for renewal of license shall do so on or before May 1 of that calendar year. Any applicator applying for renewal of license after May 1 shall be assessed a $15 late licensing fee.

(2) If the application is made for a license to engage in aerial application of pesticides, the applicant shall first meet all of the requirements of the federal aviation agency and the department of community affairs to operate the equipment described in the application.

History: En. Sec. 10, Ch. 403, L. 1971; amd. Sec. 122, Ch. 218, L. 1974; amd. Sec. 33, Ch. 213, L. 1975; amd. Sec. 5, Ch. 462, L. 1977; R.C.M. 1947, 27-222; amd. Sec. 3, Ch. 230, L. 1979.

80-8-205. Commercial operator. The department of agriculture may establish procedures for controlling pesticide operators including necessary fees by regulation.

History: En. Sec. 11, Ch. 403, L. 1971; R.C.M. 1947, 27-223.

80-8-206. Applicator's and operator's examination. (1) The department of agriculture shall publish and distribute or have available upon request such information as may be helpful to persons engaged in the application of pesticides, including information that may be required or which may appear upon any examination given to applicators and operators by the department.

(2) The department shall require an applicant for a license to show upon written examination that he possesses adequate knowledge concerning the proper use and application of pesticides under the classification for which he has applied, provided that the applicator and operator may not be required to take a reexamination upon renewal of licensing.

History: En. Sec. 12, Ch. 403, L. 1971; R.C.M. 1947, 27-224.

80-8-207. Dealers. (1) It is unlawful for a dealer to sell, deliver, or have delivered within this state any pesticide without first procuring a license from the department of agriculture for each calendar year or portion thereof. A separate dealer's license and fee shall be required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen or salesmen employed directly out of the same location or outlet and under a licensed dealer shall not be required to obtain a license. The dealer shall furnish the department the names and addresses of its fieldmen and salesmen selling pesticides within the state.

(2) The application for a license shall be accompanied by a fee of $15. Dealers applying for renewal of license shall do so on or before May 1 of that calendar year. Any dealer applying for renewal of license after May 1 shall be assessed a $15 late licensing fee.

(3) The dealer shall require the purchaser of any restricted pesticide to exhibit his license or permit issued under authority of this chapter before completing a sale.

(4) Dealers may make one application for two annual licenses if the application is accompanied by a $15 licensing fee for each year of the state biennium.

(5) Pharmacists licensed as provided for in 37-7-302 and 37-7-303, veterinarians licensed as provided for in 37-18-302 and 37-18-303, and certified pharmacies licensed under 37-7-321 shall not be required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians shall register with the department each year. However, the certified pharmacies and veterinarians shall be required to meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules.

History: En. Sec. 13, Ch. 403, L. 1971; amd. Sec. 3, Ch. 447, L. 1973; amd. Sec. 6, Ch. 462, L. 1977; R.C.M. 1947, 27-225; amd. Sec. 4, Ch. 230, L. 1979.

80-8-208. Dealer's examination. Each applicant applying for a dealer's license and/or his employee(s) in charge of pesticide sales shall be required to pass a reasonable examination administered by the department. Dealers applying for relicensing may not be required to take an additional examination if they have met the department's requirements.

History: En. Sec. 14, Ch. 403, L. 1971; R.C.M. 1947, 27-226.

80-8-209. Farm applicators. (1) Farm applicators shall obtain a certificate or special-use permit prior to purchasing and using any pesticide designated by the department as a restricted-use pesticide. The certificate, to be issued for 5 calendar years, must be renewed annually by the department or its authorized representative. The 5-year certification period shall commence on January 1, 1978.

(2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting any agricultural commodity on property owned, leased, or rented or as provided in (6) of this section.

(3) Farm applicators shall qualify for the certificate or permit by either passing a written examination or attending a training course approved by the department with or without an ungraded examination. The examination or course shall include practical knowledge as to the ability to:

(a) recognize common pests to be controlled and damage caused by them;

(b) read and understand the label and labeling information, including the common name of the pesticide(s) applied, pest(s) to be controlled, timing and methods of application, safety precautions, any preharvest or reentry restrictions, and any specific disposal procedures;

(c) apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticides to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(d) recognize local environmental situations that must be considered during application to avoid contamination; and

(e) recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides that are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

(5) Farm applicators having verified reading disabilities may become certified to use up to two restricted-use pesticides by passing a specific oral examination on the particular pesticide(s) if the applicator documents that a certified applicator in the immediate vicinity can advise him.

(6) Provisions of this chapter relating to certification of farm applicators do not apply to any farm applicator applying nonrestricted pesticides on his own land or on lands of his neighbors if he:

(a) operates farm property and operates and maintains pesticide application equipment primarily for his own use;

(b) is not regularly engaged in the business of applying pesticides for hire and does not publicly hold himself out as a pesticide applicator;

(c) operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his immediate neighbors.

History: **En. Sec. 16, Ch. 403, L. 1971; amd. Sec. 8, Ch. 462, L. 1977; R.C.M. 1947, 27-228(part); amd. Sec. 10, Ch. 20, L. 1979.**

80-8-210. Licensing nonresidents. Any nonresident applying for a license under this chapter to operate in Montana shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against the nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of Montana over such nonresident applicant; provided, however, that any such nonresident who has a duly appointed resident agent upon whom process may be served as provided by law is not required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees as provided by law for designating resident agents. The department shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be duly certified by the secretary of state.

History: **En. Sec. 17, Ch. 403, L. 1971; R.C.M. 1947, 27-229; amd. Sec. 11, Ch. 20, L. 1979.**

80-8-211. Revocation of licenses and permits. (1) The department shall establish the policy and procedures on the revocation of licenses or permits. The department may refuse to grant, renew, or may revoke a license or permit, as the case may require, when the department is satisfied that the licensee or holder of a permit is not qualified to sell, use, or apply pesticides under the conditions in the locality in which he operates or has operated or that he has committed any of the following acts, each of which is declared to be a violation of this chapter:

(a) made false or fraudulent claims or recommendations through any media misrepresenting the effect of materials or methods to be utilized;

(b) applied unapproved or illegal materials;

(c) operated in a faulty, careless, or negligent manner;

(d) operated faulty or unsafe equipment;

(e) refused or neglected to comply with the provisions of this chapter, the rules adopted hereunder, or any lawful order of the department;

(f) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required;

(g) made false or fraudulent records or reports;

(h) operated equipment for the commercial application of a pesticide without having a license or permit;

(i) used fraud or misrepresentation in making an application for a license or permit or renewal of a license or permit;

(j) used or applied a registered pesticide inconsistent with its labeling or the label or the department restrictions on the use of that pesticide.

(2) Decisions of the department relating to the issuing of licenses or permits may be appealed.

History: En. Sec. 18, Ch. 403, L. 1971; amd. Sec. 9, Ch. 462, L. 1977; R.C.M. 1947, 27-230.

80-8-212. Retail noncommercial sale of pesticides. The department of agriculture is authorized to designate the pesticides that may be sold in this state at retail for home, yard, garden, and lawn use. Only pesticides so designated may be sold at retail. The department may also limit the retail sale of such designated pesticides to quantities up to a specific number of pounds or gallons and of such concentrations as would be sublethal to humans and animals if small amounts thereof were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

History: En. Sec. 15, Ch. 403, L. 1971; amd. Sec. 4, Ch. 447, L. 1973; amd. Sec. 7, Ch. 462, L. 1977; R.C.M. 1947, 27-227.

80-8-213. Government agencies. All state agencies, municipal corporations, or any other governmental agency shall be subject to the provisions of this chapter and rules adopted thereunder concerning the application or sale of pesticides. Applicators and operators applying pesticides and dealers selling pesticides for agencies, municipal corporations, or any governmental agencies shall be subject to the provisions of 80-8-203 through 80-8-208, and the department shall issue a limited commercial applicator's, operator's, or dealer's license without a fee which shall be valid only when such applicators, operators, and dealers are applying or selling pesticides for such agencies, provided that the jurisdictional health officer, state veterinarian, their duly authorized representatives, or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

History: En. Sec. 19, Ch. 403, L. 1971; amd. Sec. 10, Ch. 462, L. 1977; R.C.M. 1947, 27-231.

80-8-214. Liability. The department shall annually require from each commercial pesticide applicator proof of financial responsibility in amounts to be determined under rules promulgated by the department.

History: En. Sec. 20, Ch. 403, L. 1971; amd. Sec. 29, Ch. 13, L. 1977; amd. Sec. 11, Ch. 462, L. 1977; R.C.M. 1947, 27-232.

Part 3

Enforcement and Penalties

80-8-301. Report of loss or damage — effect of failure to report. (1) A person suffering loss or damage resulting from the use or application of any pesticide by any person shall, within 30 days from the time the occurrence of the loss became known to him, file with the department of agriculture a verified report of loss setting forth, so far as known to the claimant, the following:

(a) name and address of claimant;

(b) type, kind, and location of property alleged to be injured or damaged;

(c) date the alleged injury or damage occurred;

(d) name of person applying the pesticide and allegedly responsible for the loss or damage;

(e) name of the owner or occupant of the property for whom such pesticide application was made.

(2) The filing of such a report or the failure to file such a report shall not be alleged in any complaint which might be filed in a court of law, and the failure to file shall not be considered any bar to the maintenance of any criminal or civil action.

(3) The failure to file such a report shall not be a violation of this chapter. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by any person, the department may refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this chapter until such report is filed. The filing of such report shall not constitute institution of a civil or criminal suit in any court, state or federal.

History: En. Sec. 21, Ch. 403, L. 1971; R.C.M. 1947, 27-233.

80-8-302. Sampling and analysis. (1) The department shall have the authority to sample, inspect, make analysis of pesticides or devices distributed within this state at such time and place and to such extent as it may deem necessary to determine whether such pesticides or devices are in compliance with the provisions of this chapter. The department is authorized with a warrant or the consent of the inhabitant or owner to enter upon any public or private premises including any vehicle of transport in order to have access to pesticides or devices and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department from sources such as the Journal of the Association of Official Analytical Chemists.

History: En. Sec. 7, Ch. 403, L. 1971; R.C.M. 1947, 27-219.

80-8-303. Embargo. (1) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe that any pesticide or device is adulterated or misbranded, has not been registered under the provisions of 80-8-201(5), fails to bear on its label the information required by this chapter, or is a white powder pesticide and is not colored as required under this chapter, he shall affix to such article a tag or other appropriate marking giving notice thereof and that the article has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It is unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise, without such permission, or to remove or alter the tag or marking.

(2) When an article detained or embargoed under subsection (1) has been found by such agent to be in violation, if after 30 days the violation has not

been resolved, he may petition the district court in whose jurisdiction the article is detained or embargoed for a condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of this chapter or rules adopted thereunder, such article shall after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees and storage and other proper expenses shall be assessed against the claimant of such pesticide or device or his agent, provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond has been executed, conditioned upon the proper labeling or processing of such pesticide or device, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the department. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant of the pesticide or device on the representation to the court by the department that the article is no longer in violation of this chapter, and that the expenses of such supervision have been paid.

History: En. Sec. 8, Ch. 403, L. 1971; amd. Sec. 28, Ch. 13, L. 1977; amd. Sec. 3, Ch. 462, L. 1977; R.C.M. 1947, 27-220.

80-8-304. Enforcement. In enforcing this chapter, the department or its duly authorized agents, upon reasonable cause, may enter upon private and public premises and property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable times:

(1) equipment subject to this chapter;

(2) actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or other property;

(3) records on the selling or use of pesticides and the person's stock of pesticides;

(4) storage and disposal of pesticides by persons licensed or regulated under this chapter;

(5) sample pesticides being applied or to be applied; or

(6) the use and application of a pesticide.

History: En. Sec. 31, Ch. 403, L. 1971; amd. Sec. 16, Ch. 462, L. 1977; R.C.M. 1947, 27-243.

80-8-305. Discarding pesticides. It shall be unlawful for any person to discard any pesticide or pesticide container in such a manner as to cause injury to humans, domestic animals, or wildlife, or to pollute any waterway in a way harmful to any wildlife therein or to the environment.

History: En. Sec. 32, Ch. 403, L. 1971; R.C.M. 1947, 27-244.

80-8-306. Violation. (1) Any person convicted of violating any of the provisions of this chapter or the rules issued thereunder or who may misrepresent, impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department or its duly authorized agent in performance of its duty in connection with the provisions of this chapter shall be adjudged guilty of a misdemeanor.

(2) The department or its authorized representative is hereby authorized to apply to the district court of the county or any county wherein a violation is about to occur or has occurred to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies of law. The injunction is to be issued without bond.

(3) Nothing in this chapter is to be construed as requiring the department or its authorized agent to report minor violations of the chapter for prosecution or for the institution of seizure proceedings when it believes the public interest will be best served by other remedial action or by a suitable notice of warning in writing; nor is any part of this chapter to be construed to apply to common carriers transporting shipments tendered to them by the general public.

(4) Notwithstanding any other provisions of this section, if any person with intent to defraud uses or reveals information relative to formulas of products acquired under the authority of 80-8-201, he shall, upon conviction, be fined not more than $500 or imprisoned for not more than 1 year, or both.

(5) In all prosecutions under the registration section involving the composition of a lot of pesticide, a certified copy of the official analysis signed by the department's authorized chemist shall be accepted as prima facie evidence of the composition.

History: En. Sec. 34, Ch. 403, L. 1971; amd. Sec. 17, Ch. 462, L. 1977; R.C.M. 1947, 27-245.

CHAPTER 9

COMMERCIAL FEEDS

Part 1 — General Provisions

Section
80-9-101. Definitions.
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Part 2 — Production and Distribution

80-9-201. Permits and registration.
80-9-202. Labeling.
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Part 1

General Provisions

80-9-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Brand name" means any word, name, symbol, or device or any combination of them identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(2) "Commercial feed" means all materials except the mixed or unmixed whole seeds or physically altered mixed or unmixed entire seeds of cereal grains with or without molasses added, when not adulterated within the meaning of subsections (1) through (5) of 80-9-204, which are distributed for use as feed or for mixing in feed. However, the department may by rule exempt from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed or mixed with other materials and are not adulterated within the meaning of subsections (1) through (5) of 80-9-204.

(3) "Custom-mixed feed" means commercial feed which consists of a mixture of either commercial feeds or feed ingredients or both of them, each batch of which is manufactured according to specifications mutually agreed to by the purchaser and the manufacturer. A copy of the specifications or a list of the ingredients, but not necessarily the percentage of each ingredient, shall be on file at the manufacturing facility.

(4) "Distribute" means to offer for sale, sell, exchange, or barter commercial feed.

(5) "Distributor" means a person who distributes.

(6) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure or function of the animal body.

(7) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(8) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed.

(9) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed, any of its containers, its wrapper, or accompanying the commercial feed.

(10) "Manufacture" means to grind, mix, blend, or further process a commercial feed.

(11) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(12) "Official sample" means a sample of feed taken by the department in accordance with the provisions of subsections (3), (5), or (6) of 80-9-301.

(13) "Percent" or "percentage" means percentage by weights.

(14) "Person" means an individual, partnership, corporation, or association.

(15) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

(16) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

(17) "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

(18) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including but not limited to gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

(19) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(20) "Ton" means a net weight of 2,000 pounds avoirdupois.

History: En. Sec. 1, Ch. 356, L. 1973; R.C.M. 1947, 3-2025; amd. Sec. 12, Ch. 20, L. 1979.

80-9-102. Administration. This chapter shall be administered by the Montana department of agriculture.

History: En. Sec. 2, Ch. 356, L. 1973; R.C.M. 1947, 3-2026.

80-9-103. Rules — adoption by department. (1) The department may adopt those rules for commercial feeds and pet foods which are specifically authorized in this chapter and those other reasonable rules necessary for the efficient enforcement of this chapter. Unless it determines that they are inconsistent with this chapter or are not appropriate to conditions which exist in this state, the department, in the interest of uniformity, shall adopt:

(a) the official definitions of feed ingredients and official feed terms adopted by the association of American feed control officials and published in the official publication of that organization; and

(b) any rules adopted under the Federal Food, Drug, and Cosmetic Act as long as the department has the authority under this chapter to adopt that rule.

(2) In adopting rules the department will follow procedures prescribed in the Montana Administrative Procedure Act.

History: En. Sec. 10, Ch. 356, L. 1973; R.C.M. 1947, 3-2034.

80-9-104. Cooperation with other agencies. The department may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out this chapter.

History: En. Sec. 14, Ch. 356, L. 1973; R.C.M. 1947, 3-2038.

80-9-105. Publications. The department shall publish at least annually, in a form it considers proper, information concerning the sale of commercial feed, data on production and use, and the results of analysis of official samples of commercial feeds sold within the state as compared with the analysis guaranteed in the registration and on the label. The information concerning production and use of commercial feed shall not disclose the operations of any person.

History: En. Sec. 15, Ch. 356, L. 1973; R.C.M. 1947, 3-2039.

Part 2

Production and Distribution

80-9-201. Permits and registration. (1) No person may manufacture for distribution or distribute a commercial feed in this state unless he has obtained a permit by filing with the department, on forms provided by the department, his name, place of business, and location of manufacturing facility, distribution point, or point of invoicing. The applicant shall pay a fee of $25 per calendar year for each facility, distribution point, or point of invoicing. A permit will remain in force until the end of the calendar year for which it is issued or until canceled by the permit holder or canceled for cause by the department. No refund may be made at the time of cancellation. No transfer of permits will be made. A distributor who distributes only pet foods or specialty pet foods is exempt from this provision.

(2) No person may distribute in this state a commercial feed, except a custom-mixed feed, which has not been registered under this section by the manufacturer. The application for registration shall be accompanied by a fee of $5 for each product other than a pet food or specialty pet food and a fee of $25 each for each pet food or specialty pet food. Upon approval by the department, a certificate of registration shall be continuous, provided that the annual fee is paid not later than December 31 of each year.

(3) The department may refuse registration of any commercial feed not in compliance with this chapter and may cancel any registration subsequently found not to be in compliance with this chapter. No registration may be refused or canceled unless the registrant has been given an opportunity to be heard before the department and to amend his application in order to comply with this chapter.

History: En. Sec. 3, Ch. 356, L. 1973; R.C.M. 1947, 3-2027.

80-9-202. Labeling. (1) A commercial feed, except a custom-mixed feed, shall be accompanied by a label containing:

(a) the net weight;

(b) the product name and any brand name under which the commercial feed is distributed;

(c) the guaranteed analysis stated in terms the department by rule determines are required to advise the user of the composition of the feed or to support claims made in the labeling. The substances or elements guaranteed must be determinable by laboratory methods such as the methods published by the association of official analytical chemists.

(d) the common or usual name of each ingredient used in the manufacture of the commercial feed. The department by rule may permit the use of a collective term for a group of ingredients which perform a similar function or it may exempt commercial feeds or any group of them from this requirement of an ingredient statement if it finds that the statement is not required in the interest of consumers.

(e) the name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed;

(f) adequate directions for use for all commercial feeds containing drugs. The department may by rule require directions for the use of other commercial feeds when necessary for their safe and effective use.

(g) precautionary statements which the department by rule determines are necessary for safe and effective use of the commercial feed.

(2) A custom-mixed feed shall be accompanied by a label, invoice, delivery slip, or other shipping document containing:

(a) the name and address of the manufacturer;

(b) the name and address of the purchaser;

(c) the date of delivery;

(d) the specific agreed to composition of the feed or a list of the ingredients, but not necessarily the percentage of each ingredient;

(e) adequate directions for use for all custom-mixed feed containing drugs. The department may by rule require directions for the use of other custom-mixed feeds when necessary for their safe and effective use.

(f) precautionary statements which the department by rule determines are necessary for safe and effective use of the custom-mixed feeds.

History: **En. Sec. 4, Ch. 356, L. 1973; R.C.M. 1947, 3-2028.**

80-9-203. Misbranded feed. A commercial feed is misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is distributed under the name of another commercial feed;

(3) it is not labeled as required in 80-9-202;

(4) it purports to be or is represented as containing a commercial feed ingredient, unless the commercial feed or feed ingredient conforms to any definition prescribed by rule of the department;

(5) any word, statement, or other information required by this chapter to appear on the label is not prominently placed there with a conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in terms which render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

History: **En. Sec. 5, Ch. 356, L. 1973; R.C.M. 1947, 3-2029.**

80-9-204. Adulterated feed. A commercial feed is adulterated if:

(1) it contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance, the commercial feed shall not be considered adulterated under this subsection if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health.

(2) it contains any added poisonous, deleterious, or nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is a pesticide chemical in or on a raw agricultural commodity or a food additive);

(3) it is or it contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

(4) it is a raw agricultural commodity and it contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act. However, where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act and that agricultural commodity has been processed by canning, cooking, freezing, dehydrating, or milling, the residue of the pesticide chemical remaining in or on the processed feed shall not be deemed

unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity, unless the feeding of the processed feed is likely to result in the pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act;

(5) it is or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act;

(6) any valuable constituents have been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;

(7) its composition or quality falls below or differs from that stated on its label;

(8) it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules adopted by the department to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it is represented to possess. In formulating these rules, the department shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under the Federal Food, Drug, and Cosmetic Act unless it determines that they are not appropriate to the conditions which exist in this state;

(9) it contains viable weed seeds in amounts exceeding the limits which the department established by rule.

History: En. Sec. 6, Ch. 356, L. 1973; R.C.M. 1947, 3-2030.

80-9-205. Prohibitions. No person may:

(1) manufacture or distribute any commercial feed that is adulterated or misbranded;

(2) adulterate or misbrand a commercial feed;

(3) distribute agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls which are adulterated within the meaning of subsections (1) through (5) of 80-9-204;

(4) remove or dispose of a commercial feed in violation of an order under 80-9-302;

(5) fail to register or obtain a permit in accordance with 80-9-201;

(6) violate 80-9-304;

(7) fail to pay inspection fees and file reports as required by 80-9-206.

History: En. Sec. 7, Ch. 356, L. 1973; R.C.M. 1947, 3-2031.

80-9-206. Inspection fees — filing of annual statement. (1) An inspection fee shall be paid on all commercial feeds, except pet foods and specialty pet foods, distributed in this state as follows:

(a) The inspection fee shall be set at 10 cents per ton. However, after May, 1975, the department may adjust the fee by rule to adequately fund the administration of this chapter. Adjustments shall be made only after holding a public hearing on the proposed changes as required in 80-9-103 and shall remain within the limits of 5 cents to 25 cents per ton. The effective date of any such rule adjusting fees will be January 1 of the calendar year following the issuance of such rule. All permit holders are to be notified immediately of any changes in fees.

(b) The feed manufacturer shall have primary responsibility for paying inspection fees. However, the distributor shall be held responsible for inspection fees if the manufacturer has not paid them.

(c) Inspection fees shall be paid on each commercial feed, including feed ingredients that are defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However, premixes prepared and used within a feed plant are exempt but not premixes or ingredients transferred from one plant to another even within the same organization.

(d) A person producing a commercial feed with a feed mixing plant at a feed lot, poultry, swine, or dairy operation shall not be required to pay inspection fees on the commercial feeds produced and used in his feeding operation at the site, but he will be responsible for any unpaid inspection fees on commercial feed purchased by him and on any commercial feed he produces and distributes other than in his feeding operations at the site.

(2) Each person who holds a permit as required in 80-9-201(1) shall:

(a) file, not later than February 28 of each year, an annual statement setting forth the number of tons of commercial feeds distributed in this state during the preceding calendar year (January 1 through December 31) and upon filing such a statement shall pay the inspection fee at the rate stated in subsection (1) of this section. Inspection fees which have not been remitted to the department within 15 days following the due date shall have a penalty fee of 10% with a minimum of $10 added to the amount due. The assessment of this penalty fee does not prevent the department from taking other action as provided in this chapter.

(b) keep those records which are necessary or are required by the department to indicate accurately the tonnage of commercial feed distributed in this state. The department may examine the records to verify statements of tonnage.

(c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department to cancel or refuse to reissue a permit.

History: **En. Sec. 8, Ch. 356, L. 1973; R.C.M. 1947, 3-2032.**

80-9-207. Deposit of fees. (1) All fees collected for permits, registration, and inspection shall be deposited in the state treasury to the credit of the earmarked revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial feeds manufactured or distributed in this state and the cost of developing better analytical methods and means of evaluating the value or the potential toxic qualities of a feed.

(2) The department may direct the board of investments to invest funds from the earmarked revenue fund pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the proper department account in the earmarked revenue fund.

History: **En. Sec. 9, Ch. 356, L. 1973; amd. Sec. 5, Ch. 16, L. 1977; R.C.M. 1947, 3-2033.**

Part 3

Enforcement and Penalties

80-9-301. Enforcement — inspection — notice — sampling and analysis. (1) To enforce this chapter, the department upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge may enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, or held or enter any vehicle being used to transport or hold commercial feeds. The department may inspect at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling found in them. The inspection may include the verification of only those records and production and control procedures necessary to determine compliance with the good manufacturing practice rules adopted under 80-9-204(8).

(2) A separate notice shall be given for each inspection, but a notice is not required for each entry made during the period covered by the inspection. Each inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(3) If the officer or employee making the inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he shall give the owner, operator, or agent in charge a receipt describing the sample obtained.

(4) If the owner of a factory, warehouse, or establishment described in subsection (1) or his agent refuses to allow an inspection, the department may obtain from the district court a warrant directing the owner or his agent to allow inspection of the premises described in the warrant.

(5) To enforce this chapter the department may enter upon any public or private premises, including any vehicle of transport, during regular business hours to obtain samples and examine records relating to distribution of commercial feeds.

(6) Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists or with other generally recognized methods.

(7) The results of all analyses of official samples shall be forwarded by the department to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the department shall upon request within 30 days following receipt of the analysis furnish the registrant a portion of the sample.

(8) The department, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in 80-9-101(12) and obtained and analyzed as provided for in subsections (3), (5), and (6) of this section.

(9) All chemical analyses shall be performed cooperatively by the department and the agricultural experiment station at Montana state university.

History: En. Sec. 11, Ch. 356, L. 1973; R.C.M. 1947, 3-2035.

80-9-302. Enforcement — embargo order — condemnation. (1) When the department has reasonable cause to believe any lot of commercial feed is in violation of this chapter or a rule adopted by the department, it may issue and enforce a written or printed embargo order requiring the person holding the commercial feed not to dispose of it in any manner until written permission is given by the department or the court. The department shall release the feed when this chapter and the rules of the department have been complied with. If compliance is not obtained within 30 days, the department may begin or, upon the request of the registrant or the person holding the commercial feed, shall begin proceedings for condemnation.

(2) Commercial feed not in compliance with this chapter or the rules of the department may be seized on complaint of the department to a district court in the area in which the commercial feed is located. If the court finds the commercial feed in violation of this chapter and orders its condemnation, it shall be disposed of in any manner consistent with the quality of the commercial feed and state law. The disposition of the commercial feed may not be ordered by the court without first giving the owner or person from whom the feed was seized an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this chapter.

History: En. Sec. 12, Ch. 356, L. 1973; R.C.M. 1947, 3-2036.

80-9-303. Violation — penalty — injunction — appeal. (1) A person who violates this chapter or who obstructs, prevents, or attempts to obstruct or prevent the department in the performance of its duty under this chapter is guilty of a misdemeanor and shall be fined not less than $100 or more than $300 for the first violation and not less than $500 or more than $1,000 for a subsequent violation.

(2) Nothing in this chapter requires the department to prosecute, begin seizure proceedings, or issue an embargo order as a result of minor violations or when it believes the public interest will best be served by suitable notice of warning in writing.

(3) A county attorney to whom a violation is reported shall prosecute in a court of competent jurisdiction without delay. Before the department reports a violation for prosecution, an opportunity shall be given the distributor to present his view to the department.

(4) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating this chapter or any rule adopted under this chapter notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(5) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this chapter may within 30 days seek judicial review in the district court where the person resides or has his place of business.

History: En. Sec. 13, Ch. 356, L. 1973; R.C.M. 1947, 3-2037(1) thru (5).

80-9-304. Disclosure of information prohibited. A person who uses to his own advantage or reveals to persons other than officers of the department or to the courts when relevant in a judicial proceeding any information acquired under this chapter concerning any method, records, formulations, or processes which as a trade secret is entitled to protection is guilty of a misdemeanor and shall be fined not more than $300 or imprisoned for not more than 1 year, or both. However, the department may exchange information of a regulatory nature with the proper officials of the United States government or of other states who are similarly prohibited by law from revealing that information.

History: **En. Sec. 13, Ch. 356, L. 1973; R.C.M. 1947, 3-2037(6).**

CHAPTER 10

COMMERCIAL FERTILIZERS

Part 1 — General Provisions

Section

80-10-101. Definitions.
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80-10-210. Licensee reports — confidentiality — inspection — failure to file.
80-10-211. Cancellation or refusal of registration or licenses.
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Part 3 — Enforcement

80-10-301. Rules — adoption by department.
80-10-302. Enforcement — embargo order — condemnation.
80-10-303. Violations — enforcement proceedings — judicial review.

Part 1

General Provisions

80-10-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Brand" means a term, design, or trademark used in connection with one or several grades of commercial fertilizer.

(2) "Commercial fertilizer" includes any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and

which is designed for use or claimed to have value in promoting plant growth, yield, or quality of the crop.

(a) "Bulk fertilizer" is commercial fertilizer (dry or liquid) distributed in nonpackage form or in containers of greater than 1,000 pounds.

(b) "Fertilizer materials" is a commercial fertilizer which either:

(i) contains important quantities of not more than one of the primary plant nutrients (nitrogen, phosphoric acid, and potash);

(ii) has approximately 85% of its plant nutrient content present in the form of a single chemical compound; or

(iii) is derived from a plant or animal residue or byproduct or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

(c) "Mixed fertilizers" is a commercial fertilizer (dry or liquid) containing any combination or mixture of fertilizer materials.

(d) "Packaged fertilizer" is commercial fertilizer (dry or liquid) distributed in sealed containers of 1,000 pounds or less.

(e) "Specialty fertilizer" is a commercial fertilizer (dry or liquid) distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries and includes commercial fertilizers used for research or experimental purposes.

(3) "Distribute" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers.

(4) "Distributor" means any person who distributes.

(5) "Grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis. However, fertilizer materials, bone meal, manures, and similar raw materials may be guaranteed in fractional units.

(6) "Licensee" means any person who has obtained a license from the department so he may legally distribute commercial fertilizer other than specialty fertilizers or soil amendment in this state.

(7) "Manipulated manures" means substances composed primarily of excreta, plant remains, or mixtures of such substances which have been processed in any manner, including the addition of plant nutrients, drying, grinding, and other means.

(8) "Official sample" means any sample of commercial fertilizer taken by the department and so designated by the department.

(9) "Percent or percentage" means the percentage by weight.

(10) "Person" means an individual, partnership, association, firm, or corporation.

(11) "Registrant" means the person who registers commercial fertilizer and/or soil amendment.

(12) "Soil amendment" means any material not included under commercial fertilizer or those products subject to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which is added to soil or to plants for purposes of influencing the growth, yield, or quality of the crop, soil flora or fauna, or other soil characteristics.

(13) "Ton" means a net weight of 2,000 pounds avoirdupois.

History: En. 3-1714.2 by Sec. 1, Ch. 279, L. 1975; R.C.M. 1947, 3-1714.2.

80-10-102. Guaranteed analysis. (1) Until the department prescribes the alternative form under subsection (2) of this section, "guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

(a) The following plant nutrients shall be guaranteed:

Total nitrogen (N) ---%
Available phosphoric acid (P_2O_5) --%
Soluble potash (K_2O) --%

(b) For unacidulated mineral phosphatic materials and basic slag, bonemeal, tankage, and other organic phosphatic materials, the total phosphoric acid and degree of fineness may also be guaranteed.

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the department. The guarantees for other nutrients shall be expressed in the form of the element. The sources of other nutrients, including but not limited to oxides, salt, and chelates, may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department.

(d) Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of 100 pounds per ton shall be guaranteed when required by regulation.

(2) If the department finds, after public hearing, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, it may require by department rule that the guaranteed analysis be in the following form:

Total nitrogen (N)---%
Available phosphorus (P) ---%
Soluble potassium (K)--%

(3) The effective date of the rule may not be less than 6 months following the adoption of the rule. For a period of 2 years following the effective date of the rule, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. However, after the effective date of a rule requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium is the grade for those elements.

(4) Soil amendments shall guarantee the minimum quantity of each active ingredient in terms approved by the department or in terms as set forth in rules issued by the department. They shall also meet any other requirements established by rule by the department.

History: En. 3-1714.1 by Sec. 87, Ch. 218, L. 1974; Sec. 3-1714.1, R.C.M. 1947; amd. and redes. 3-1714.3 by Sec. 2, Ch. 279, L. 1975; amd. Sec. 18, Ch. 13, L. 1977; R.C.M. 1947, 3-1714.3.

80-10-103. Assessment to fund educational and experimental programs — collection. Moneys to fund 80-10-104 through 80-10-106 will be produced by an assessment of 35 cents per ton of fertilizer sold within Montana. Collections shall be made in accordance with procedures in 80-10-207 and shall be collected from the licensee or registrant of fertilizer.

History: En. Sec. 1, Ch. 397, L. 1971; amd. Sec. 19, Ch. 13, L. 1977; R.C.M. 1947, 3-1729.

80-10-104. Allocation of assessment. The assessment shall be collected by the department and up to 1% shall be retained by the department for costs of collection. The balance shall be deposited in the earmarked revenue fund with 50% for use by the cooperative extension service and 50% for use by the agricultural experiment station in programs recommended by the fertilizer advisory committee provided for in 2-15-1516 and approved by the respective directors.

History: En. Sec. 2, Ch. 397, L. 1971; amd. Sec. 98, Ch. 218, L. 1974; R.C.M. 1947, 3-1730.

80-10-105. Educational and experimental programs. (1) The moneys provided by 80-10-103 shall be used for comprehensive statewide educational and experimental programs aimed at optimum use of fertilizers for feed and food production.

(2) Major goals are to improve Montana's economy by providing farmers and ranchers the most accurate information possible about fertilizer use and soil management for greatest profits consistent with environmental protection on the many varied soil and climatic conditions of the state.

History: En. Sec. 3, Ch. 397, L. 1971; R.C.M. 1947, 3-1731.

80-10-106. Meetings and functions of advisory committee. The advisory committee shall meet a minimum of once each year with the directors of the cooperative extension service and the agricultural experiment station to perform the following functions:

(1) review the educational and experimental programs financed by this chapter;

(2) recommend needed programs and/or program adjustments;

(3) report to the Montana house and/or senate agriculture committees as requested.

History: En. Sec. 6, Ch. 397, L. 1971; R.C.M. 1947, 3-1734.

Part 2

Licensing and Registration

80-10-201. Registration and licenses. (1) Each brand and grade of fertilizer and each soil amendment except unmanipulated animal and vegetable manures shall be registered by the manufacturer before distribution in this state. The application for registration shall be submitted to the department on a form furnished or approved by the department and shall be accompanied by a fee of $10 per grade for each fertilizer and for each soil amendment with exception of specialty fertilizers in packages of 10 pounds or less which shall be registered at a fee of $25 each. Upon approval, the department shall furnish a copy of the registration to the applicant. All registrations expire on December 31 of each year.

(2) (a) The application for registration shall include:

(i) the brand and grade;
(ii) the guaranteed analysis;
(iii) the source of each plant food element guaranteed;
(iv) the name and address of the registrant;
(v) a copy or facsimile of each label and of promotional material when requested by the department.

(b) Further, the department shall require the applicant to furnish replicated data, performed by a reputable investigator whose work is recognized as acceptable by the director of the agricultural experiment station or his designee, verifying any claims for effectiveness or agricultural value of any fertilizer or soil amendment product which is not generally recognized as having the values claimed at the use rates recommended.

(3) A distributor may not be required to register any brand or grade of commercial fertilizer which is already registered under this section by another person.

History: En. 3-1715.1 by Sec. 3, Ch. 279, L. 1975; R.C.M. 1947, 3-1715.1(1), (2).

80-10-202. License required. No person shall distribute in this state any type of fertilizer or soil amendment, except unmanipulated animal or vegetable manures, or specialty fertilizer, until a license to distribute has been obtained from the department for each facility distributing into this state and for each handling facility in this state upon payment of a $50 fee for each license. The department may exempt, by rule, manufacturers. All licenses expire on December 31 of each year and are subject to the following:

(1) The application for license shall be on forms provided by the department.

(2) The applicant shall provide a sample copy of labeling to be used. The form of labeling shall meet department standards, established by rule, and all labeling shall be in proper form.

(3) The licensee is not required to register a grade of fertilizer registered by the manufacturer or blended to grade from registered products by the licensee.

History: En. 3-1715.1 by Sec. 3, Ch. 279, L. 1975; R.C.M. 1947, 3-1715.1(4).

80-10-203. Fertilizer to be uniform. (1) The plant nutrient content of every brand and grade of commercial fertilizer shall remain uniform for the period of registration.

(2) The manufacturer or distributor shall at all times deliver a uniform grade of fertilizer or soil amendment. When two or more fertilizers are delivered in the same load, they shall be thoroughly and uniformly mixed unless they are in separate compartments.

History: En. 3-1715.1 by Sec. 3, Ch. 279, L. 1975; R.C.M. 1947, 3-1715.1(3), (5).

80-10-204. Labeling. (1) Any commercial fertilizer distributed in this state in packages shall have affixed to or printed on the container a label setting forth in clearly legible and conspicuous form:

(a) the net weight;

(b) the name and address of the manufacturer or distributor guaranteeing the analysis;

(c) the brand and product name;

(d) the grade;
(e) the guaranteed analysis; and
(f) other requirements as established by rule.

(2) All commercial fertilizer delivered in this state in bulk, whether a manufactured grade or blended grade, shall be accompanied by a clearly legible document which shall be supplied to the purchaser at the time of delivery and at the time his invoice is delivered. The document shall show:

(a) net weight;
(b) name and address of the distributor or manufacturer guaranteeing the analysis;
(c) guaranteed analysis or, on blended fertilizer, the net weight and guaranteed analysis of each ingredient added; and
(d) other requirements as established by rule.

(3) When distributed in containers, soil amendments shall have a label affixed to or printed on the container. When delivered in bulk the label shall be clearly legible and shall accompany the delivery of the product. This label shall be supplied to the purchaser at the time of delivery and at the time of invoicing. The label shall contain the following information:

(a) net weight;
(b) name and address of the registrant or licensee who is responsible for the product;
(c) brand and product name;
(d) guaranteed analysis;
(e) other requirements, such as particle size, as established by rule.

History: **En. 3-1716.1 by Sec. 4, Ch. 279, L. 1975; R.C.M. 1947, 3-1716.1.**

80-10-205. Misbranding and adulteration prohibited. No person shall distribute a misbranded or adulterated fertilizer or soil amendment. A commercial fertilizer or soil amendment is misbranded if it:

(1) carries any false or misleading statement upon or attached to the container or if false or misleading statements concerning its agricultural value are made on the container or in any advertising matter accompanying or associated with the product;

(2) is distributed under the name of another product;

(3) is not labeled as required in 80-10-204 and in accordance with rules prescribed under this chapter; or

(4) purports to be or is represented as a commercial fertilizer or is represented as containing a plant nutrient or commercial fertilizer, unless that plant nutrient or commercial fertilizer conforms to the definition of identity, if any, prescribed by rule of the department. In adopting this type rule, the department shall give due regard to commonly accepted definitions and official fertilizer terms as issued by the association of American plant food control officials.

History: **En. 3-1720.1 by Sec. 7, Ch. 279, L. 1975; R.C.M. 1947, 3-1720.1.**

80-10-206. Inspection, sampling, and analysis. (1) The department, in cooperation with the agricultural experiment station of Montana state university, shall sample, inspect, analyze, and test commercial fertilizers and soil amendments distributed in this state at a time and place and to an extent necessary to determine whether the commercial fertilizers or soil amendments are in compliance with this chapter. The department may enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers or soil amendments subject to this chapter.

(2) The methods of analysis and sampling shall be those adopted by the department from sources such as those of the association of official analytical chemists. The results of analysis, together with additional information the department considers advisable, shall be transmitted promptly to the manufacturer and to the dealer or person in whose possession the product was sampled.

(3) The department, in determining whether any commercial fertilizer is deficient in plant food or soil amendment is deficient, shall be guided solely by the official sample obtained and analyzed as provided for in subsections (1) and (2) of this section.

(4) If on the basis of an inspection or the analysis of the official sample a commercial fertilizer or soil amendment is found to be subject to penalty or other legal action, the department shall forward to the registrant notification of the violation at least 10 days before its report is made public. If during that period no adequate evidence to the contrary is made available to the department, the report becomes official. Upon request, the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

History: En. Sec. 7, Ch. 41, L. 1957; amd. Sec. 90, Ch. 218, L. 1974; amd. Sec. 6, Ch. 279, L. 1975; R.C.M. 1947, 3-1718.

80-10-207. Fees. (1) There shall be paid to the department fees on all commercial fertilizer distributed in this state, except specialty fertilizers sold in packages of 10 pounds or less, and unmanipulated animal and vegetable manures, provided that sales to manufacturers or exchanges between them are exempt. The fees are:

(a) inspection, 20 cents per ton. The department may by rule after hearing adjust the inspection fee not to exceed a maximum of 25 cents per ton to maintain adequate funding for the administration of this part. Any change in fee becomes effective on the first day of a reporting period. All registrants shall be given notice of any change in fees before the effective date.

(b) assessment, the fee prescribed in 80-10-103. The assessment fee shall be used to fund educational and experimental programs as provided in 80-10-103 through 80-10-106.

(2) There shall be paid to the department on all soil amendments distributed in this state an inspection fee of 10 cents per ton subject to the following provisions:

(a) sales to manufacturers or exchanges between them are exempt; and

(b) when less than 50 tons of registered soil amendment is sold per 6-month period, there shall be paid to the department a fee of $5 per soil amendment per 6-month period in lieu of the 10 cents per ton fee. Inspection fees shall be used by the department for administration of this part.

(3) (a) Every registrant and licensee who distributes a soil amendment or commercial fertilizer, except specialty fertilizer in packages of 10 pounds or less and unmanipulated manures, to an unlicensed or unregistered person in this state shall file with the department on forms furnished or approved by

the department a semiannual statement for the periods ending June 30 and December 31 setting forth the number of net tons of each commercial fertilizer and/or soil amendment distributed in this state during the 6-month period. The report is due on or before the 30th day of the month following the close of each period. The registrant or licensee shall pay the proper fees, as set forth in subsection (1) of this section, at that time.

(b) If the tonnage report is not filed and the payment of fees is not made within 30 days after the end of the period a collection fee amounting to 10% of the amount due but not less than $10 shall be assessed against the registrant or licensee, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant or licensee.

(4) All fees collected for licenses, registration, and inspection and moneys collected as penalties shall be deposited in the state treasury to the credit of the earmarked revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial fertilizer and soil amendments manufactured or distributed in this state. Reserve funds may be invested by the department with interest credited to the earmarked revenue fund.

History: En. 3-1717.1 by Sec. 5, Ch. 279, L. 1975; R.C.M. 1947, 3-1717.1.

80-10-208. Penalties. (1) A penalty of two times the commercial value of the deficiency, as determined by the dealer's or manufacturer's price on the date of sampling of the deficiency or deficiencies, shall be assessed:

(a) if the analysis shows that a commercial fertilizer is deficient in one or more of its guaranteed primary plant foods (NPK) beyond the investigational allowance as established by regulation; or

(b) if the overall index value of the fertilizer is below the level established by regulation.

(2) When a commercial fertilizer is subject to a penalty under both (1)(a) and (1)(b), the larger penalty applies.

(3) Deficiencies beyond the investigational allowances as established by regulation in any other constituent covered under subsections (1)(b),(1)(c), and (1)(d) of 80-10-102 which the registrant is required to or may guarantee shall be evaluated, and penalties shall be assessed at two times the commercial value of the deficiency as determined by the dealer's retail price on the date of sampling.

(4) Nothing contained in this section shall prevent any person from appealing the department's decision to a court of competent jurisdiction.

(5) All penalties assessed under this section shall be paid to the consumer of the lot, not to exceed 100 tons, of commercial fertilizer represented by the sample analyzed within 3 months after the date of notice from the department to the registrant or licensee. If at the end of the 3-month period the consumer cannot be found, receipts shall be taken and promptly forwarded to the department for deposit in the earmarked revenue fund as provided in 80-10-207.

History: En. 3-1726.1 by Sec. 13, Ch. 279, L. 1975; R.C.M. 1947, 3-1726.1.

80-10-209. Publications. The department shall publish at least annually information concerning the sales of commercial fertilizers and soil amendments together with data on their production and use as it considers advisable and shall report the results of the analyses based on official samples of commercial fertilizers and soil amendments sold in this state.

History: En. Sec. 11, Ch. 41, L. 1957; amd. Sec. 92, Ch. 218, L. 1974; amd. Sec. 9, Ch. 279, L. 1975; R.C.M. 1947, 3-1722.

80-10-210. Licensee reports — confidentiality — inspection — failure to file. (1) Information contained in the reports required by 80-10-207(3) shall be held confidential by the department. Summary data published by the department shall be in a form that will not disclose details of any operation or business.

(2) The department may inspect and audit, during normal business hours, each licensee's records for the purpose of verifying tonnage reports.

(3) Failure to file an accurate report constitutes a violation of this chapter and may be punished by fine, revocation of license, or both.

History: En. 3-1721.1 by Sec. 8, Ch. 279, L. 1975; R.C.M. 1947, 3-1721.1; amd. Sec. 13, Ch. 20, L. 1979.

80-10-211. Cancellation or refusal of registration or licenses. (1) The department may cancel the registration of any commercial fertilizer or soil amendment and may refuse to register any commercial fertilizer or soil amendment upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any rules adopted under it. However, no registration may be revoked or refused until the registrant is given the opportunity to amend his application or correct other practices.

(2) The department may cancel any license or refuse to license any person when it has satisfactory evidence that the person has used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any rules adopted under it. However, no license may be revoked or refused until the person involved is given the opportunity to appear for a hearing by the department.

History: En. Sec. 13, Ch. 41, L. 1957; amd. Sec. 6, Ch. 43, L. 1963; amd. Sec. 94, Ch. 218, L. 1974; amd. Sec. 11, Ch. 279, L. 1975; R.C.M. 1947, 3-1724.

80-10-212. Exchanges between manufacturers. Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil amendment to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer or soil amendment to manufacturers or manipulators who have registered their brands and grades or licensed their facilities as required by the provisions of this chapter.

History: En. Sec. 17, Ch. 41, L. 1957; amd. Sec. 15, Ch. 279, L. 1975; R.C.M. 1947, 3-1728.

Part 3

Enforcement

80-10-301. Rules — adoption by department. (1) The department may adopt those rules for commercial fertilizer and soil amendment which are specifically authorized in this chapter and those other reasonable rules necessary for the efficient enforcement of this chapter.

(2) In adopting rules the department shall follow procedures prescribed in the Montana Administrative Procedure Act.

History: En. 3-1723.1 by Sec. 10, Ch. 279, L. 1975; R.C.M. 1947, 3-1723.1.

80-10-302. Enforcement — embargo order — condemnation. (1) When the department has reasonable cause to believe any lot of commercial fertilizer or soil amendment is in violation of this chapter or a rule adopted by the department, it may issue and enforce a written or printed embargo order requiring the person holding the commercial fertilizer or soil amendment not to dispose of it in any manner until written permission is granted by the department or the court. The department shall release the product when this chapter and the rules of the department have been complied with. If compliance is not obtained within 30 days, the department may begin or, upon the request of the registrant or the person holding the product, shall begin proceedings for condemnation.

(2) Commercial fertilizer or soil amendment not in compliance with this chapter or the rules of the department may be seized on complaint of the department to a district court in the area in which the product is located. If the court finds the product in violation of this chapter and orders its condemnation, the fertilizer or amendment shall be disposed of in any manner consistent with the quality of the product and state law. The disposition of the product may not be ordered by the court without first giving the owner or person from whom the product was seized an opportunity to apply to the court for release of the product or for permission to process or relabel the product to bring it into compliance with this chapter.

History: En. 3-1725.1 by Sec. 12, Ch. 279, L. 1975; R.C.M. 1947, 3-1725.1.

80-10-303. Violations — enforcement proceedings — judicial review. (1) If it appears from the examination of any commercial fertilizer that this chapter or the rules adopted under this chapter have been violated, the department shall give notice of the violations to the registrant, licensee, distributor, or possessor from whom the sample was taken. A person notified shall be given an opportunity to be heard under rules of the department. If it appears after a hearing, either in the presence or absence of the person notified, that this chapter or rules issued under this chapter have been violated, the department may certify the facts to the proper prosecuting attorney.

(2) A person who violates this chapter or the rules adopted under this chapter or who obstructs, prevents, or attempts to prevent the department from performing its duty under this chapter is guilty of a misdemeanor and shall be fined not less than $300 or more than $500 for the first violation and not less than $300 or more than $1,000 for a subsequent violation. In all prosecutions under this chapter involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis of the department is prima facie evidence of the composition.

(3) Nothing in this chapter requires the department to report for prosecution or for the beginning of seizure proceedings minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(4) A prosecuting attorney to whom a violation is reported shall prosecute the violator in a court of competent jurisdiction without delay.

(5) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under the chapter notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(6) If a person adversely affected by an act, order, or ruling made by the department under this chapter is not entitled to a hearing before the department to determine his rights, he may within 45 days sue in the district court of any county where the alleged violation giving rise to the department's act, order, or ruling occurred, for new trial of the issues bearing upon the act, order, or ruling. After the trial the court may issue and enforce those orders, judgments, or decrees it considers proper, just, and equitable.

History: En. Sec. 16, Ch. 41, L. 1957; amd. Sec. 2, Ch. 55, L. 1965; amd. Sec. 97, Ch. 218, L. 1974; amd. Sec. 14, Ch. 279, L. 1975; R.C.M. 1947, 3-1727.

CHAPTER 11

MARKETING

Part 1 — Agricultural Marketing and Transportation

Section
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Part 1

Agricultural Marketing and Transportation

80-11-101. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural products" means crops, livestock, and livestock products.

(2) "Marketing" means all activities involved in getting agricultural products from the producer to the consumer and includes transportation, processing, and distribution.

History: En. Sec. 2, Ch. 330, L. 1969; Sec. 3-117, R.C.M. 1947; amd. and redes. 3-3002 by Sec. 6, Ch. 218, L. 1974; R.C.M. 1947, 3-3002.

80-11-102. Intent of legislature. It is the intent of the legislature that the department of agriculture coordinate marketing from the initial producer to the consumer and reduce marketing cost by assisting both producer and industry to find ways to more efficiently market their products. The department shall also endeavor to develop new and improved systems of marketing which will result in the stabilization and improvement of returns for industry and the producer. It shall work with farm leaders, farmer cooperatives, processors, wholesalers, retailers, representatives of the transportation industry, consumer groups, and others as a means of correcting marketing inefficiencies or eliminating restrictions.

History: En. Sec. 1, Ch. 330, L. 1969; Sec. 3-116, R.C.M. 1947; amd. and redes. 3-3001 by Sec. 5, Ch. 218, L. 1974; R.C.M. 1947, 3-3001.

80-11-103. Department's marketing duties. The department shall:

(1) keep abreast of research results in the subject matter area of marketing;

(2) coordinate work with local, state, and national planning groups and other interested parties in helping them identify major problem areas and needs in marketing;

(3) develop and carry out appropriate action programs that will result in significant improvements being made by those people concerned with problems of marketing;

(4) coordinate efforts with representatives of other agencies or organizations or persons who are concerned with related programs;

(5) investigate the costs of marketing;

(6) gather and disseminate information concerning supply, demand, favorable marketing information, prevailing prices, and changes in marketing movements, practices, and rates, including common and cold storage of food products;

(7) promote, assist, and encourage the organization and operation of cooperative and other associations and organizations for improving the relations and services among producers, distributors, and consumers of food products;

(8) investigate the practice and methods concerning the marketing of agricultural products;

(9) act as mediator or arbitrator, when invited, in a controversy or issue that may arise between producers and distributors;

(10) assist producers and distributors in the economical and efficient distribution of agricultural products at fair prices;

(11) appear and be heard at any hearing involving agricultural marketing affecting Montana.

History: En. Sec. 4, Ch. 330, L. 1969; Sec. 3-119, R.C.M. 1947; amd. and redes. 3-3003 by Sec. 7, Ch. 218, L. 1974; R.C.M. 1947, 3-3003.

80-11-104. Cooperation of state agencies. All agencies of the state which participate in marketing shall cooperate with and assist the department.

History: En. Sec. 8, Ch. 330, L. 1969; Sec. 3-123, R.C.M. 1947; amd. and redes. 3-3004 by Sec. 8, Ch. 218, L. 1974; R.C.M. 1947, 3-3004.

Part 2

Wheat Research and Marketing

80-11-201. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Commercial channels" means the sale of wheat or barley for any use when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat or barley or product produced from wheat or barley.

(2) "Committee" means the Montana wheat research and marketing committee provided for in 2-15-3002.

(3) "First purchaser" means any person, public or private corporation, association, or partnership buying, accepting for shipment, or otherwise acquiring the property in or to wheat or barley from a grower and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, where the actual or constructive possession of such wheat or barley is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim.

(4) "Grower" means any landowner personally engaged in growing wheat or barley, a tenant of the landowner personally engaged in growing wheat or barley, or both the owner and the tenant jointly; and includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and any and all other business units, devices, and arrangements.

(5) "Sale" includes any pledge or mortgage of wheat or barley after harvest to any person, public or private.

History: En. Sec. 4, Ch. 314, L. 1967; amd. Sec. 109, Ch. 218, L. 1974; amd. Sec. 2, Ch. 71, L. 1975; R.C.M. 1947, 3-2904.

80-11-202. Declaration of policy. In the presence of the facts that wheat is the principal grain crop produced in Montana and as such is an agricultural resource of the first magnitude in the economy of the inhabitants of Montana, a prime factor in the production of wealth and the development and stabilization of property values and of activities and enterprises which are bases and sources of important contributions by taxation to the public revenues, and that Montana wheat is a commodity which enters a world market highly competitive in character and that barley is also an important crop, it is hereby declared to be the public policy of the state of Montana to protect and foster the health, prosperity, and general welfare of its people by encouraging and promoting intensive, scientific, and practical research into all phases of wheat and barley culture and production, marketing, and use and into the development of markets for wheat and barley grown in Montana by the department.

History: En. Sec. 2, Ch. 314, L. 1967; amd. Sec. 108, Ch. 218, L. 1974; amd. Sec. 1, Ch. 71, L. 1975; R.C.M. 1947, 3-2902.

80-11-203. Compensation — per diem. Members of the committee shall receive no salary but shall be paid from the wheat research and marketing account in the federal and private revenue fund a per diem of $25 for each day they are engaged in the transaction of official business, together with their actual and necessary travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while on official business.

History: En. Sec. 6, Ch. 314, L. 1967; amd. Sec. 110, Ch. 218, L. 1974; amd. Sec. 3, Ch. 71, L. 1975; amd. Sec. 5, Ch. 439, L. 1975; R.C.M. 1947, 3-2906.

80-11-204. Election of chairman — time of meetings. At the first meeting of the administrative committee, it shall elect a chairman from among its members. The committee shall meet at least once every 3 months and at such other times as called by the chairman or by any three members of the committee.

History: En. Sec. 8, Ch. 314, L. 1967; R.C.M. 1947, 3-2908.

80-11-205. Powers of the committee. (1) The committee may:

(a) adopt rules necessary for the administration of this part;

(b) provide, through the department, for the enforcement of this part;

(c) provide for the conduct of research into the production, marketing, and uses of wheat and barley;

(d) enter into contracts or agreements with Montana state university and other local, state, or national organizations, public or private, for the purposes of improving wheat or barley quality, increasing the efficiency of production, developing marketing knowledge, developing markets, determining new uses for wheat or barley, developing alternative crops for wheat or barley, and carrying out all research and marketing contemplated by this part. The committee may not establish research units or agencies of its own.

(2) No researchers or professional or scientific personnel may be employed to carry out this part except as provided in subsection (1)(d) of this section.

(3) None of the powers or duties provided for in this part permit participation in state or federal political action by the committee.

History: En. Sec. 9, Ch. 314, L. 1967; amd. Sec. 111, Ch. 218, L. 1974; amd. Sec. 4, Ch. 71, L. 1975; R.C.M. 1947, 3-2909.

80-11-206. Annual assessment on wheat and barley grown. (1) There is hereby levied an annual assessment of 2 ½ mills per bushel (except for the fiscal years ending on June 30, 1980 through 1983, when not more than 5 mills per bushel may be levied) upon all wheat grown and 5 mills per hundredweight (except for the fiscal years ending on June 30, 1980 through 1983, when not more than 10 mills per hundredweight may be levied) on all barley grown in the state of Montana and sold through commercial channels. The assessment is hereby levied and imposed on each grower of wheat or barley in the state of Montana:

(a) in the case of sale of wheat or barley, at the time of any sale of wheat or barley by a grower, and shall be collected by the first purchaser of the wheat or barley from the grower at the time of each settlement for wheat or barley purchased; or

(b) in the case of a pledge or mortgage of wheat or barley as security for a loan under any federal price support program, the assessment shall be collected by deducting the amount thereof from the proceeds of such loan at the time the loan is made by the agency or person making the loan.

(2) The assessment levied under the provisions of this part shall be deducted and collected as provided by this part, whether such wheat or barley is stored in this or any other state. The assessment shall attach to each transaction, but no grower shall be subject to assessment more than once irrespective of the number of times it shall be the subject of a sale, pledge, mortgage, or other transaction, the assessment being imposed and attaching on the initial sale, pledge, mortgage, or other transaction in which the wheat or barley grower parts with title to the wheat or barley, or creates some interest therein in a pledgee, mortgagee, or other person.

History: **En. Sec. 11, Ch. 314, L. 1967; amd. Sec. 1, Ch. 201, L. 1971; amd. Sec. 5, Ch. 71, L. 1975; R.C.M. 1947, 3-2911; amd. Sec. 1, Ch. 530, L. 1979.**

80-11-207. Buyer's delivery of invoice to grower — form — filing of sworn statement — payment of assessment — refund. (1) The purchaser of the wheat or barley at the time of sale or the pledgee, mortgagee, or other lender at the time of the loan or advance shall give separate invoices for each purchase to the grower. The invoices shall be on forms approved by the department and shall show:

(a) the name and address of the grower and seller;

(b) the name and address of the purchaser or the lender;

(c) the number of bushels of wheat or hundredweights of barley sold, mortgaged, or pledged;

(d) the date of the purchase, mortgage, or pledge and the amount of assessment collected and remitted to the department.

(2) The purchaser, mortgagee, or pledgee shall file with the department, on forms prescribed by the department, within 20 days after the end of a month in which he purchases a grower's wheat or barley or in which a lender makes a loan or advance on a grower's wheat or barley, a sworn statement of the number of bushels of wheat or hundredweights of barley purchased in Montana or the number of bushels of wheat or hundredweights of barley mortgaged or pledged or otherwise transferred or liened as security for a loan during the preceding calendar month. At the time the sworn statement is filed, the purchaser or lender shall pay to the department the assessment provided for in 80-11-206 for deposit in the wheat research and marketing account in the revolving fund.

(3) The statement referred to in subsections (1) and (2) of this section shall be legibly written and shall be entirely free of any corrections or erasures. A person may not alter any part of a statement.

(4) After 30 days and before 90 days following the deduction of the assessment by the first purchaser or the first lender, the grower may, upon the submission of a written, verified request to the department, obtain a refund of the assessment. The request shall be accompanied by the original invoices received by the grower at the time of settlement. The department shall keep complete records of all refunds made under the provisions of this section. Records of refunds may be destroyed 2 years after the refund is

made. All original invoices shall be returned to the grower with the refund payment.

History: En. Sec. 13, Ch. 314, L. 1967; amd. Sec. 2, Ch. 201, L. 1971; amd. Sec. 112, Ch. 218, L. 1974; amd. Sec. 6, Ch. 71, L. 1975; R.C.M. 1947, 3-2913.

80-11-208. Receipt of gifts, grants, or donations for research purposes. The department may receive any gifts, grants, or donations for any research of scientific inquiries conducted under this part and may spend them in compliance with the conditions of the grants, gifts, and donations.

History: En. Sec. 15, Ch. 314, L. 1967; amd. Sec. 113, Ch. 218, L. 1974; R.C.M. 1947, 3-2915.

80-11-209. Official bonds of employees. Employees of the department participating in the handling of assessment receipts or other receipts shall be bonded for the faithful and safe handling and accounting for the receipts while in their hands and for faithful compliance with this part.

History: En. Sec. 16, Ch. 314, L. 1967; amd. Sec. 114, Ch. 218, L. 1974; R.C.M. 1947, 3-2916.

80-11-210. Research and marketing account — sources — use — expenditures. (1) There shall be an account in the federal and private revenue fund known as the wheat research and marketing account. The following shall be placed in the account:

(a) the proceeds of all millage levies collected under this part; and

(b) the proceeds from all gifts, grants, or donations to the department for research authorized under this part.

(2) The account shall be maintained for the purposes of this part and shall be separate from all other accounts of the department.

(3) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the wheat research and marketing account.

History: En. Sec. 17, Ch. 314, L. 1967; amd. Sec. 2, Ch. 70, L. 1973; amd. Sec. 115, Ch. 218, L. 1974; amd. Sec. 2, Ch. 16, L. 1977; R.C.M. 1947, 3-2917.

80-11-211. Violation — penalty. Any person violating any of the provisions of this part shall be guilty of a misdemeanor and shall upon conviction be fined not less than $25 or more than $500.

History: En. Sec. 19, Ch. 314, L. 1967; R.C.M. 1947, 3-2919.

80-11-212 through 80-11-220 reserved.

80-11-221. Allocation of assessment. For the fiscal years ending on June 30, 1980 through 1983, $200,000 a year of the assessment provided for in 80-11-206 is allocated to the department of agriculture to carry out the provisions of 80-11-222.

History: En. Sec. 2, Ch. 530, L. 1979.

Compiler's Comments

Codification. Sec. 5, Ch. 530, L. 1979, provided: "Sections 2 through 4 are intended to be codified as an integral part of Title 80, chapter 11, part 2, and the provisions contained in Title 80, chapter 11, part 2, apply to sections 2 through 4." Sections 2 through 4 are codified as 80-11-221 through 80-11-223.

80-11-222. Powers of department. The department may contract with both private and government organizations to provide for research, development, production, and marketing of fuels and foods derived from wheat and barley. This includes but is not limited to agreements with the department of natural resources and conservation to fund grants provided for in Title 90, chapter 4, part 1.

History: **En. Sec. 3, Ch. 530, L. 1979.**

80-11-223. Allocation of unused money — determination of assessment. (1) Any money allocated to the department under 80-11-221 remaining as of June 30 of each year shall revert to the wheat research and marketing account in the federal and private revenue fund.

(2) The wheat research and marketing committee shall set the amount of the assessment provided for in 80-11-206 each year to provide the funds necessary to carry out this part.

History: **En. Sec. 4, Ch. 530, L. 1979.**

TITLE 81

LIVESTOCK

Ch.
1. Department of Livestock.
2. Disease Control.
3. Marks and Brands.
4. Containment of Livestock.
5. Unlawful Transporting or Driving of Livestock.
6. Livestock Protective Associations.
7. Predatory Animal Control.
8. Marketing.
9. Slaughter.
Chapters 10 through 19 reserved.
20. Poultry and Eggs.
21. Dairy Products.
22. Manufactured Dairy Products.
23. Milk Price Control.

CHAPTER 1

DEPARTMENT OF LIVESTOCK

Part 1 — General Provisions

Section
81-1-101. Definitions.
81-1-102. Duties and powers of department.
81-1-103. Audit of bills — payment of expenses.
81-1-104. Investment of earmarked revenue account funds — crediting of investment income.

Part 2 — Inspectors and Detectives

81-1-201. Appointment and powers.
81-1-202. Duties.
81-1-203. Compensation.
81-1-204. Assignment to districts.

Part 3 — Administration of Animal Health Laws

81-1-301. Administrator — appointment and qualifications.
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Part 4 — Rodent Control

81-1-401. Department of livestock to operate rodent control program.
81-1-402. Expenditures authorized.
81-1-403. Purchase and sale of rodent control supplies.

Part 1

General Provisions

81-1-101. Definitions. Unless the context requires otherwise, in Title 81, the following definitions apply:

(1) "Board" means the board of livestock provided for in 2-15-3102.

(2) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

History: **En. 46-103.1 by Sec. 48, Ch. 310, L. 1974; R.C.M. 1947, 46-103.1.**

81-1-102. Duties and powers of department. The department shall exercise general supervision over and, so far as possible, protect the livestock interests of the state from theft and disease and recommend legislation which, in the judgment of the department, fosters this industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of the livestock interests, and assist in the prosecution of persons charged with illegal branding or theft of livestock or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands.

History: **En. Sec. 4, Ch. 51, L. 1917; re-en. Sec. 3256, R.C.M. 1921; re-en. Sec. 3256, R.C.M. 1935; amd. Sec. 49, Ch. 310, L. 1974; amd. Sec. 52, Ch. 359, L. 1977; R.C.M. 1947, 46-104.**

81-1-103. Audit of bills — payment of expenses. The department shall audit all bills for expenses incurred by it in the discharge of its duties, which shall be paid out of the department's moneys in the earmarked revenue fund.

History: **En. Sec. 5, Ch. 51, L. 1917; re-en. Sec. 3257, R.C.M. 1921; re-en. Sec. 3257, R.C.M. 1935; amd. Sec. 88, Ch. 147, L. 1963; amd. Sec. 50, Ch. 310, L. 1974; R.C.M. 1947, 46-105.**

81-1-104. Investment of earmarked revenue account funds — crediting of investment income. The board may direct the board of investments to invest funds from the earmarked revenue accounts of the department pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the earmarked account of the department from which the investment is made.

History: **En. 46-105.1 by Sec. 1, Ch. 16, L. 1977; R.C.M. 1947, 46-105.1.**

Part 2

Inspectors and Detectives

81-1-201. Appointment and powers. The department may appoint stock inspectors and detectives necessary for the protection of the livestock interests of this state. The inspectors and detectives shall take the official oath required by law and shall have similar powers and authority to those conferred by law on deputy sheriffs. However, they are not entitled to the fees or emoluments awarded by law to deputy sheriffs. The board shall devise an examination for the qualification of stock inspectors and detectives and may appoint and employ only persons who successfully pass such examination. The board shall promulgate administrative rules for the taking of this examination and define a passing grade.

History: En. Sec. 2970, Pol. C. 1895; re-en. Sec. 1796, Rev. C. 1907; amd. Sec. 1, Ch. 170, L. 1921; re-en. Sec. 3309, R.C.M. 1921; re-en. Sec. 3309, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1974; amd. Sec. 96, Ch. 310, L. 1974; R.C.M. 1947, 46-701.

81-1-202. Duties. The stock inspectors and detectives shall arrest all persons who in their presence violate the stock laws of this state. Every stock inspector and detective, on information that a person has committed an offense against the laws of this state by engaging in illegal branding or theft of stock or an offense against the laws of this state for the protection of the rights and interests of stock owners, must make the necessary affidavit for the arrest and examination of the person and on a warrant issued for the person immediately arrest the person and bring him before the proper officer and notify the department of his acts.

History: En. Sec. 2972, Pol. C. 1895; re-en. Sec. 1798, Rev. C. 1907; re-en. Sec. 3311, R.C.M. 1921; re-en. Sec. 3311, R.C.M. 1935; amd. Sec. 97, Ch. 310, L. 1974; amd. Sec. 53, Ch. 359, L. 1977; R.C.M. 1947, 46-703.

81-1-203. Compensation. The stock inspectors and detectives are under the exclusive control and direction of the department. They must be paid for their services in the amount which the department determines.

History: En. Sec. 2973, Pol. C. 1895; re-en. Sec. 1799, Rev. C. 1907; re-en. Sec. 3312, R.C.M. 1921; re-en. Sec. 3312, R.C.M. 1935; amd. Sec. 91, Ch. 147, L. 1963; amd. Sec. 98, Ch. 310, L. 1974; R.C.M. 1947, 46-704.

81-1-204. Assignment to districts. The stock inspectors and detectives are district officers, and the department must designate the district in which the inspectors and detectives serve, and the district must be designated in their commissions.

History: En. Sec. 2991, Pol. C. 1895; re-en. Sec. 1800, Rev. C. 1907; re-en. Sec. 3313, R.C.M. 1921; re-en. Sec. 3313, R.C.M. 1935; amd. Sec. 99, Ch. 310, L. 1974; R.C.M. 1947, 46-705.

Part 3

Administration of Animal Health Laws

81-1-301. Administrator — appointment and qualifications. (1) The board shall appoint a person to be directly responsible to it for the administration of the laws relating to animal health.

(2) He must have a doctor of veterinary medicine degree from an accredited college or school, and he must be licensed to practice veterinary medicine in this state.

History: En. Sec. 3, Ch. 262, L. 1921; re-en. Sec. 3262, R.C.M. 1921; re-en. Sec. 3262, R.C.M. 1935; amd. Sec. 52, Ch. 310, L. 1974; R.C.M. 1947, 46-203.

81-1-302. Duties of administrator. The administrator, subject to the rules of the board, may act for and perform the duties imposed by law on the board when the board is not in session, but any order or regulation promulgated by him shall be subject to review, modification, or annulment by the board.

History: En. Sec. 4, Ch. 262, L. 1921; re-en. Sec. 3263, R.C.M. 1921; re-en. Sec. 3263, R.C.M. 1935; amd. Sec. 53, Ch. 310, L. 1974; R.C.M. 1947, 46-204.

81-1-303. Administrator's expertise to be considered. In any action taken by the board in 81-2-102 and 81-20-101, the board shall ask for and consider the expertise and judgment of the administrator of the laws relating to animal health.

History: En. 46-209.1 by Sec. 58, Ch. 310, L. 1974; R.C.M. 1947, 46-209.1.

81-1-304. Appointment of federal veterinary inspectors. With the approval of either the federal veterinarian in charge in this state or the United States department of agriculture, the department of livestock may appoint federal veterinarians or federal lay inspectors stationed in this state, as deputies or agents for the department. All federal officers so appointed as deputies or agents of the department possess the powers and duties of regular deputies or agents of the department, but they shall act without compensation and hold office only at the pleasure of the department.

History: En. Sec. 6, Ch. 262, L. 1921; re-en. Sec. 3265, R.C.M. 1921; re-en. Sec. 3265, R.C.M. 1935; amd. Sec. 54, Ch. 310, L. 1974; R.C.M. 1947, 46-206.

Part 4

Rodent Control

81-1-401. Department to operate rodent control program. The department may establish and operate organized and systematic programs for the control and suppression of jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, and other rodents and related animals in this state when they are injurious to agriculture, other industries, and the public health. For this purpose, the department may enter into written agreements with appropriate federal agencies, other state agencies, counties, associations, corporations, or individuals covering the methods and procedures to be followed in the control and suppression of these noxious rodents and related animals, the extent of supervision to be exercised by the department, and the use and expenditure of funds appropriated, when this cooperation is necessary to promote the control and suppression of noxious rodents and related animals.

History: En. Sec. 1, Ch. 136, L. 1949; amd. Sec. 44, Ch. 310, L. 1974; amd. Sec. 1, Ch. 242, L. 1975; R.C.M. 1947, 3-2701.

81-1-402. Expenditures authorized. The department may make expenditures for equipment, materials, supplies, and other expenses, including expenditures for personal services, which are necessary to execute the functions imposed on it by this part.

History: En. Sec. 2, Ch. 136, L. 1949; amd. Sec. 45, Ch. 310, L. 1974; R.C.M. 1947, 3-2702.

81-1-403. Purchase and sale of rodent control supplies. In addition to the expenditures authorized in 81-1-402, the department may purchase rodent control supplies, including rodent baits, for the use of cooperating governmental agencies, counties, associations, corporations, or individuals in the control of noxious rodents and related animals and to make these supplies and baits available to the cooperators at approximate cost.

History: En. Sec. 4, Ch. 136, L. 1949; amd. Sec. 105, Ch. 147, L. 1963; amd. Sec. 46, Ch. 310, L. 1974; R.C.M. 1947, 3-2704.

CHAPTER 2

DISEASE CONTROL

Part 1 — General Administration

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81-2-107. Duty to report contagious diseases.
81-2-108. Diseased animals not to run at large — burial of carcasses.
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81-2-601. Tuberculin — permission for sale or distribution of.
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Part 1

General Administration

81-2-101. Authority of department agents. In the performance of his official duties, an agent or officer of the department may enter on or in a lot, yard, land, building, room, premises, enclosure, car, wagon, boat, or other place or vehicle used for the treatment, storage, manufacture, display, or transportation of animals, meat, or dairy products intended for sale or disposal as food. The agent or officer may enter anywhere where there may be found livestock affected with or which has been exposed to or which the officer has reason to believe is either affected with or has been exposed to an infectious, contagious, communicable, or dangerous disease or disease-carrying insects.

History: En. Sec. 7, Ch. 262, L. 1921; re-en. Sec. 3266, R.C.M. 1921; re-en. Sec. 3266, R.C.M. 1935; amd. Sec. 55, Ch. 310, L. 1974; R.C.M. 1947, 46-207.

81-2-102. Powers of department. (1) The department may:

(a) supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, enclosure, or other place or section in this state which is or may be used or occupied by livestock and which in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine livestock in this state when the livestock is affected with or has been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules which are necessary and proper to circumscribe, extirpate, control, or prevent the disease.

(b) foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control of diseases or to the care of livestock and its products and to this end may establish and maintain a laboratory, may make or cause to be made biologic products, curatives, and preventative agents, and may perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state;

(c) impose and collect such fees as the department considers appropriate for the tests and services performed by it at the laboratory or elsewhere and for biologic products, curatives, and preventative agents made or caused to be made by the department. In fixing these fees the department shall take into consideration the costs, both direct and indirect, of the tests, services, products, curatives, and agents. All fees shall be deposited in the earmarked revenue fund for the use of the animal health functions of the department.

(d) adopt rules and orders which it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock in this state and to this end may adopt rules and orders necessary or proper governing inspections and tests of livestock intended for importation into this state before it may be imported into this state;

(e) adopt rules and orders which it considers necessary or proper for the inspection, testing, and quarantine of all livestock imported into this state;

(f) adopt rules and orders which it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its byproducts, barns, dairy cows, factories, and other places and premises where meat or meat foods, milk or its products, or any byproducts thereof intended for sale or consumption as food are produced, kept, handled, or stored. An authorized representative of the department may take samples of a product so produced, kept, handled, or stored for analysis or testing by the department. The records of the samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and verified as to the analysis or test by the oath of the chemist or bacteriologist making it, are prima facie evidence of the facts set forth in them when offered in evidence in a prosecution or action at law or in equity for violation of part 1, 2, or 3 of this chapter, 81-9-201 through 81-9-207, 81-20-101, 81-21-102, 81-21-103, or a rule or order of the board adopted thereunder. These standards, insofar as they relate to dairies or milk and its byproducts, may not include standards of weight or measurement.

(g) adopt rules and orders which seem necessary or proper for the supervision and control of manufactured and refined foods for livestock and the manufacture, importation, sale, and method of using a biologic remedy or curative agent for the treatment of diseases of livestock. However, as far as practicable the standards approved by the United States department of agriculture shall be adopted.

(h) install an adequate system of meat inspection, at any time and in such places as public welfare may demand, under the rules which may provide fees for the maintenance of such inspection and which shall provide ways and means for shipping home-grown and home-killed meats into any city in this state. As far as practicable, the rules shall conform with the meat-inspection requirements of the United States department of agriculture.

(i) slaughter or cause to be slaughtered any livestock in this state known to be affected with or which has been exposed to an infectious, contagious, communicable, or dangerous disease, when such slaughter is necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds, outbuildings, fixtures, furniture, or personal property infected with any such infectious, contagious, communicable, or dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease;

(j) indemnify the owner of any property destroyed by order of the department or pursuant to any rules adopted by the department under parts 1, 2, or 3 of this chapter, 81-9-201 through 81-9-207, 81-20-101, 81-21-102, 81-21-103;

(k) require persons, firms, and corporations engaged in the production or handling of meat, meat food products, dairy products, or any byproducts thereof to furnish statistics of the quantity and cost of the food and food products produced or handled and the name and address of persons supplying them any of the products.

(2) When in the exercise of its powers or the discharge of its duties it becomes necessary for employees of the department to investigate facts and conditions, they may administer oaths, take affidavits, and compel the attendance and testimony of witnesses.

History: (1)En. Sec. 8, Ch. 262, L. 1921; re-en. Sec. 3267, R.C.M. 1921; re-en. Sec. 3267, R.C.M. 1935; amd. Sec. 56, Ch. 310, L. 1974; amd. Sec. 1, Ch. 139, L. 1975; amd. Sec. 9, Ch. 12, L. 1977; Sec. 46-208, R.C.M. 1947; (2)En. Sec. 31, Ch. 262, L. 1921; re-en. Sec. 3290, R.C.M. 1921; re-en. Sec. 3290, R.C.M. 1935; amd. Sec. 82, Ch. 310, L. 1974; Sec. 46-240, R.C.M. 1947; R.C.M. 1947, 46-208, 46-240; amd. Sec. 1, Ch. 28, L. 1979.

81-2-103. Adoption of rules. The department shall adopt and enforce rules for the inspection and tuberculin test of dairy cattle or other animals and for the inspection, test, treatment, or disposition of livestock affected with or which may have been exposed to infectious, contagious, communicable, or dangerous disease and for the quarantines provided for in this chapter or 81-20-101.

History: En. Sec. 9, Ch. 262, L. 1921; re-en. Sec. 3268, R.C.M. 1921; re-en. Sec. 3268, R.C.M. 1935; amd. Sec. 59, Ch. 310, L. 1974; amd. Sec. 10, Ch. 12, L. 1977; R.C.M. 1947, 46-211.

81-2-104. Rules — agreement with federal government. When the department determines that it is necessary to eradicate or control an infectious, contagious, communicable, or dangerous disease of livestock in this state, in cooperation with the United States department of agriculture or other federal agency, and to appraise and destroy animals affected with or which have been exposed to a disease or to destroy property in order to remove the infection and complete the cleaning and disinfection of the premises or to do any act or incur any other expense reasonably necessary in suppressing this disease, the board may accept and adopt on behalf of the state the rules adopted by the United States department of agriculture or other federal agency under authority of an act of congress or the portion considered necessary, suitable, or applicable. The department may adopt other rules necessary or desirable for this purpose and cooperate with the United States department of agriculture or other federal agency in the enforcement of the rules accepted and adopted.

History: En. Sec. 2, Ch. 177, L. 1937; amd. Sec. 71, Ch. 310, L. 1974; R.C.M. 1947, 46-227.

81-2-105. Authority of municipal corporations. Nothing in this title prevents the governing authority of a municipal corporation from enacting or enforcing ordinances for the inspection of slaughterhouses, meat depots, meat markets, meat food products, creameries, butter or cheese factories, dairies, or dairy products located, sold, or offered for sale in the limits of the municipal corporation. An ordinance may not be enforced in conflict with the powers of this title delegated to the department and its officers or agents.

History: En. Sec. 11, Ch. 262, L. 1921; re-en. Sec. 3270, R.C.M. 1921; re-en. Sec. 3270, R.C.M. 1935; amd. Sec. 63, Ch. 310, L. 1974; amd. Sec. 12, Ch. 12, L. 1977; R.C.M. 1947, 46-217; amd. Sec. 1, Ch. 14, L. 1979.

81-2-106. Cooperation by public officers. The department of health and environmental sciences, the board of health and environmental sciences, and local boards of health of a county, city, or town shall cooperate with and assist the department of livestock in matters which relate to the execution of its sanitary powers regarding livestock and their food products in the manner which the department of livestock prescribes, either by general rule or direct order.

History: En. Sec. 25, Ch. 262, L. 1921; re-en. Sec. 3284, R.C.M. 1921; re-en. Sec. 3284, R.C.M. 1935; amd. Sec. 78, Ch. 310, L. 1974; amd. Sec. 21, Ch. 12, L. 1977; R.C.M. 1947, 46-234.

81-2-107. Duty to report contagious diseases. A person, including the owner or custodian, who has reason to suspect the existence of a dangerous, infectious, contagious, or communicable disease in livestock or the presence of animals exposed to the disease in this state shall immediately give notice to the department.

History: En. Sec. 27, Ch. 262, L. 1921; re-en. Sec. 3286, R.C.M. 1921; re-en. Sec. 3286, R.C.M. 1935; amd. Sec. 80, Ch. 310, L. 1974; R.C.M. 1947, 46-236.

81-2-108. Diseased animals not to run at large — burial of carcasses. It shall be unlawful for any owner, agent, or person in charge of any domestic animal or animals that are known to be suffering from or exposed to a dangerous, infectious, contagious, or communicable disease to permit such animal or animals to run at large on the public range or public highway. It shall be the duty of the owner or agent or person in charge of animals which died or they have reason to suspect did die from an infectious, contagious, communicable, or dangerous disease to properly bury or burn the same.

History: En. Sec. 28, Ch. 262, L. 1921; re-en. Sec. 3287, R.C.M. 1921; re-en. Sec. 3287, R.C.M. 1935; R.C.M. 1947, 46-237.

81-2-109. Expenses, how paid — lien and foreclosure. The expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, and supervision of other treatment of diseased or exposed livestock by the department and the sanitary inspection of dairies, packinghouses, meat depots, slaughterhouses, milk depots, and other premises shall be paid for by the department. However, the owner of the livestock or property is liable for all expenses, except the salary of the supervising officer representing the department, when the owner, agent, or person in charge of the livestock or property has violated the rules of the department. These expenses are a lien on the livestock or other property, and the department may retain possession of the livestock until the charges and expenses are paid. The lien is not dependent on possession and may be foreclosed in the name of the agent of the department by sale at public auction of the stock or as many as may be necessary to pay the sum of the costs, after 10 days' notice by posting in three public places in the county. The lien may also be foreclosed by an action in a court of competent jurisdiction against the owner of the livestock to recover the amount of charges and expenses.

History: En. Sec. 21, Ch. 262, L. 1921; re-en. Sec. 3280, R.C.M. 1921; re-en. Sec. 3280, R.C.M. 1935; amd. Sec. 74, Ch. 310, L. 1974; amd. Sec. 18, Ch. 12, L. 1977; R.C.M. 1947, 46-230; amd. Sec. 2, Ch. 28, L. 1979.

81-2-110. Expense of cleaning and disinfecting carriers' facilities. The expense of cleaning and disinfecting cars, yards, or other transportation facilities of a common carrier, when required by the department, is a charge against the common carrier. Also, the expense of supervising the cleaning and disinfecting of cars for transportation of livestock, when required at a point other than disinfection points agreed on between the department and the carrier, is a charge against the common carrier.

History: En. Sec. 22, Ch. 262, L. 1921; re-en. Sec. 3281, R.C.M. 1921; re-en. Sec. 3281, R.C.M. 1935; amd. Sec. 75, Ch. 310, L. 1974; R.C.M. 1947, 46-231.

81-2-111. Injunctive remedies. The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating the provisions of parts 1 through 3 of this chapter or rules adopted thereunder, notwithstanding the existence of other remedies at law. When the application of other remedies has been insufficient to compel action to control, extirpate, or prevent the spread of disease or upon a showing that an animal disease emergency exists and that other remedies probably would be insufficient to compel action to control the emergency, the department may apply for and the court may grant mandatory injunctive relief.

History: En. 46-210.1 by Sec. 1, Ch. 190, L. 1977; R.C.M. 1947, 46-210.1.

81-2-112. Prohibition by governor on importation of animals from localities where disease exists — penalty. (1) Whenever the governor has good reason to believe that any disease dangerous or inimical to the livestock or poultry industry or dangerous to dogs or other animals has become epidemic in certain localities in any other state, territory, District of Columbia, or other country, he shall issue a proclamation designating such localities and prohibiting the importation therefrom into this state, except under such restrictions as he may deem proper, of any livestock, poultry, dogs, or other animals or articles or commodities likely to convey such disease or diseases.

(2) Any person who, after the publication of such proclamation, knowingly receives any livestock, dog, fowl, or other animal or article or commodity designated in such proclamation as likely to convey disease from any of the prohibited districts and transports or conveys the same within the limits of this state is punishable by imprisonment in the county jail for not less than 60 days or more than 8 months and by a fine of not less than $300 or more than $5,000 or by both such fine and imprisonment and is further liable for any and all damages and loss that may be sustained by any person or persons by reason of the disobedience of such proclamation.

History: (1)En. Sec. 1, Ch. 31, L. 1925; re-en. Sec. 3295.1, R.C.M. 1935; Sec. 46-245, R.C.M. 1947; (2)En. Sec. 2, Ch. 31, L. 1925; re-en. Sec. 3295.2, R.C.M. 1935; Sec. 46-246, R.C.M. 1947; R.C.M. 1947, 46-245, 46-246.

81-2-113. Penalty. Any person, persons, firm, or corporation violating any provision of parts 1 through 3 of this chapter, or the rule or order promulgated by authority of same shall be guilty of a misdemeanor. Violations shall be tried without undue delay in any court of competent jurisdiction.

History: En. Sec. 29, Ch. 262, L. 1921; re-en. Sec. 3288, R.C.M. 1921; re-en. Sec. 3288, R.C.M. 1935; amd. Sec. 23, Ch. 12, L. 1977; R.C.M. 1947, 46-238.

81-2-114. Civil liability. A person, firm, or corporation which violates parts 1 through 3 of this chapter or rules or orders of the department is liable for damages sustained by a person because of the violation. The damages may be recovered by the person in a civil action in a court of competent jurisdiction.

History: En. Sec. 30, Ch. 262, L. 1921; re-en. Sec. 3289, R.C.M. 1921; re-en. Sec. 3289, R.C.M. 1935; amd. Sec. 81, Ch. 310, L. 1974; amd. Sec. 24, Ch. 12, L. 1977; R.C.M. 1947, 46-239.

Part 2

Indemnity

81-2-201. Classification of animals as to compensation for slaughter. Animals slaughtered under the direction of the department by order of the board are divided into two classes for the purposes of compensation:

(1) Animals determined by the department to be affected with an incurable disease, which are destroyed by order of the board, are designated as animals of class 1, and unless otherwise provided each of the animals shall be paid for on the basis of 75% of its appraised value. The county in which the animal was owned at the time it was determined to be affected with an incurable disease is liable in part, as later provided, for an indemnity to be paid for the animal. The ownership and county are determined by an affidavit of the owner of the animal or his agent. Each animal directed to be destroyed shall be appraised by a representative or an authorized agent of the department with the owner agreeing in writing as to the value of the animal. When appraised, due consideration shall be given to its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present and probable effect of the disease on the animal. In the absence of an agreement, there shall be appointed three competent, disinterested parties, one appointed by the department, one by the owner, and a third by the first two, to appraise each animal, taking into consideration its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present probable effect of the disease on the animal. The judgment of the majority is the judgment of the appraisers and is binding on both parties as the final determination of indemnity to be paid for each animal. The total compensation of each group of appraisers is limited to $5 for the group appraisal, one-half of which shall be paid by the department. The total amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class, and the total combined amount of indemnity paid for the animal by the state and a county may not exceed the sum of $100 for a registered purebred animal or the sum of $50 for a grade animal. Animals presented for appraisal as purebreds shall be accompanied by their registration papers at the time of appraisal or they shall be appraised as grades. If purebreds are less than 3 years old and not registered, the department may grant a reasonable time for their registration and presentation of their registration papers to the appraiser. Registration papers shall accompany the claim for indemnity.

(2) Animals of class 1 shall be paid for on the basis of their full appraised value as determined in this section if no evidence of incurable disease is disclosed by autopsy, bacteriologic, serologic, microscopic, or other findings. The total combined amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class. The total combined amount of indemnity paid by the state and a county for the animal may not exceed $100 for a registered purebred animal or $50 for a grade animal.

(3) Animals which are determined by the department to be affected with or exposed to foot-and-mouth disease, rinderpest, contagious pleura pneumonia, surra, or other infectious, contagious, communicable, or dangerous disease, which is not of its nature necessarily fatal, and are destroyed by order of the department as a sanitary safeguard, are designated as animals of class 2 and each animal shall be paid for on the basis of its full appraised value. The appraised value shall be determined in the manner set out in subsection (1) of this section. The appraisal of the animals shall be based on the meat, dairy, or breeding value of the animal, but where appraisal is based on breeding value of the animal, no appraisal may exceed three times its meat or dairy value. The total amount of indemnity paid by the state for an animal may not exceed the actual sound value of an animal in its class. No indemnity for a class 2 animal may be paid by a county. In the case of destruction of an animal afflicted with brucellosis (Bang's disease), no indemnity shall be paid for the animal unless the board, in its discretion, determines the best interests of this state will be served by payment of an indemnity. In this event, the board shall set out standards of indemnity by rules and may not pay in excess of $100 for a registered purebred animal or $50 for a grade animal. In all cases where the federal government or agency other than the state compensates the owner in whole or in part for livestock destroyed as a sanitary safeguard, the amount of compensation from the state shall be determined under 81-2-210.

(4) Animals which are injured or killed while they are being inspected or tested under an order of the department or its agent, which do not come within either class 1 or class 2, may be paid for at their full appraised value if the claim for the animal is recommended for payment at a meeting of the board. Where it is shown that the injury or death of the animal was not proximately due to the negligence of the owner or his agent, the whole claim, when approved, shall be paid out of department funds. The limit of indemnity for an animal paid for by the state may not exceed that fixed by this section for animals of class 2.

History: En. Sec. 12, Ch. 262, L. 1921; re-en. Sec. 3271, R.C.M. 1921; re-en. Sec. 3271, R.C.M. 1935; amd. Sec. 1, Ch. 75, L. 1943; amd. Sec. 1, Ch. 107, L. 1949; amd. Sec. 64, Ch. 310, L. 1974; amd. Sec. 13, Ch. 12, L. 1977; R.C.M. 1947, 46-218.

81-2-202. Payment for other personal property. Personal property other than livestock destroyed by order of the department shall be paid for on the basis of its appraised value. The appraised value is determined in the manner specified in 81-2-201 for the determination of the appraised value of animals.

History: En. Sec. 13, Ch. 262, L. 1921; re-en. Sec. 3272, R.C.M. 1921; re-en. Sec. 3272, R.C.M. 1935; amd. Sec. 2, Ch. 75, L. 1943; amd. Sec. 65, Ch. 310, L. 1974; R.C.M. 1947, 46-219.

81-2-203. Indemnity — from what funds paid. In payment for animals or property destroyed by order of the department, the state shall pay one-half of the indemnity out of the money at the disposal of the department. The county liable in part for the indemnity shall pay one-half of the total indemnity out of the general fund of the county.

History: En. Sec. 14, Ch. 262, L. 1921; re-en. Sec. 3273, R.C.M. 1921; re-en. Sec. 3273, R.C.M. 1935; amd. Sec. 66, Ch. 310, L. 1974; amd. Sec. 14, Ch. 12, L. 1977; R.C.M. 1947, 46-220.

81-2-204. Presentation of claims for indemnity. Claims against the state and county which arise from the destruction of animals or property by order of the department shall be made on forms provided by the department. They must contain an affidavit by the owner or his agent with knowledge of the animal or property, certifying to the ownership of the animal or property, the county in which they are owned, and that the animal or property has been destroyed under the law and the rules of the department. These claims must be accompanied by a certificate from the department that the animal or property was ordered destroyed. The claims shall also be accompanied by a certificate of appraisement as appraisal is determined under 81-2-201, together with an account of sale showing the net proceeds from the sale of the animal, if any, paid to the owner of the animal.

History: En. Sec. 15, Ch. 262, L. 1921; re-en. Sec. 3274, R.C.M. 1921; re-en. Sec. 3274, R.C.M. 1935; amd. Sec. 4, Ch. 75, L. 1943; amd. Sec. 67, Ch. 310, L. 1974; R.C.M. 1947, 46-221.

81-2-205. Indemnity for class two animals in state less than one hundred twenty days. Indemnity for animals of class 2 shall be paid out of department funds when the animals have not been in this state for at least 120 days and the payment is authorized by the department under 81-2-209(1)(e).

History: En. Sec. 5, Ch. 75, L. 1943; amd. Sec. 68, Ch. 310, L. 1974; R.C.M. 1947, 46-222.

81-2-206. Verification and payment of claims. (1) All claims against the department must be verified by oath of the claimant or his agent with knowledge of the facts.

(2) Claims against the state arising under this part, if found correct, shall be processed and paid from funds of the department.

History: (1)En. Sec. 2, Ch. 262, L. 1921; re-en. Sec. 3261, R.C.M. 1921; re-en. Sec. 3261, R.C.M. 1935; amd. Sec. 20, Ch. 97, L. 1961; amd. Sec. 51, Ch. 310, L. 1974; Sec. 46-202, R.C.M. 1947; (2)En. Sec. 16, Ch. 262, L. 1921; re-en. Sec. 3275, R.C.M. 1921; re-en. Sec. 3275, R.C.M. 1935; amd. Sec. 21, Ch. 97, L. 1961; amd. Sec. 69, Ch. 310, L. 1974; amd. Sec. 15, Ch. 12, L. 1977; Sec. 46-224, R.C.M. 1947; R.C.M. 1947, 46-202, 46-224.

81-2-207. Payment from county funds. The board of county commissioners of the county liable in part for the indemnity for any such animal or property destroyed shall cause to be paid the amount due from said county out of the general funds of the county.

History: En. Sec. 17, Ch. 262, L. 1921; re-en. Sec. 3276, R.C.M. 1921; re-en. Sec. 3276, R.C.M. 1935; R.C.M. 1947, 46-225.

81-2-208. Sale of condemned carcasses — disposition of proceeds. Where the carcass of an animal ordered destroyed under this chapter is found on official postmortem inspection to be fit for human consumption, the owner shall receive the net proceeds from the sale of the carcass. The proceeds shall be deducted from his claim against the state and county for the slaughter. A representative of the department may, when considered advisable or necessary or when it is desired by the owner, sell the carcass on terms he considers to be in the best interests of this state, and the net proceeds obtained from the sale shall be paid to the owner. This procedure does not invalidate the owner's claim for indemnity for any balance due him.

History: En. Sec. 18, Ch. 262, L. 1921; re-en. Sec. 3277, R.C.M. 1921; re-en. Sec. 3277, R.C.M. 1935; amd. Sec. 1, Ch. 177, L. 1937; amd. Sec. 70, Ch. 310, L. 1974; amd. Sec. 16, Ch. 12, L. 1977; R.C.M. 1947, 46-226.

81-2-209. When no indemnity. (1) The owner of an animal or property destroyed under this chapter is entitled to indemnity, except in the following cases:

(a) animals belonging to the United States;

(b) animals brought into this state which violate this chapter or rules of the department;

(c) animals which the owner or claimant knew to be diseased or had notice of the disease at the time they came into his possession;

(d) animals which had the disease for which they were slaughtered or which were destroyed because of exposure to the disease at the time of their arrival in this state. However, a class 2 animal shipped into this state under department rules and accompanied by the proper certificate of health from a recognized state or federal veterinarian may be paid for when payment is authorized by the department.

(e) animals which have not been in this state for at least 120 days before the discovery of the disease; however, class 2 animals which have not been in the state 120 days may be paid for when payment is authorized by the department;

(f) when the owner or agent has not used reasonable diligence to prevent disease or exposure to disease;

(g) when the owner or agent has not complied with the rules of the department with respect to animals condemned;

(h) when animals condemned are not destroyed within 60 days after they are determined to be affected with or exposed to a disease which requires them to be destroyed by order of the department.

(2) No compensation or indemnity will be paid for the destruction of livestock affected with tuberculosis or other infectious, contagious, communicable, or dangerous disease unless the entire herd or band of affected livestock is under the supervision of the department for the eradication of the disease.

History: En. Sec. 19, Ch. 262, L. 1921; re-en. Sec. 3278, R.C.M. 1921; re-en. Sec. 3278, R.C.M. 1935; amd. Sec. 22, Ch. 97, L. 1961; amd. Sec. 72, Ch. 310, L. 1974; amd. Sec. 17, Ch. 12, L. 1977; R.C.M. 1947, 46-228.

81-2-210. Compensation from federal government or other agency. (1) If the federal government or an agency other than the state or county compensates the owner for livestock or property destroyed by order of the department, the amount of the compensation from the federal government or other agency shall be deducted from the owner's claim as filed against the state and county, that is, from the balance that remains after the net salvage price received from the sale or other disposal of the condemned animal has been deducted from the appraised value.

(2) If the owner or agent of the livestock or property destroyed by order of the department forfeits an indemnity, which the owner would otherwise be entitled to from the federal government or compensating agency other than the state or county, by violation of the rules of the federal government or other agency, an amount equal to the indemnity which would have been paid by the federal government or other indemnifying agency but for the forfeiture shall also be deducted from the owner's claim; that is, the balance that remains after the net salvage price received from the sale or other disposal of the condemned animal has been deducted from the appraised value.

History: En. Sec. 20, Ch. 262, L. 1921; re-en. Sec. 3279, R.C.M. 1921; re-en. Sec. 3279, R.C.M. 1935; amd. Sec. 3, Ch. 75, L. 1943; amd. Sec. 1, Ch. 164, L. 1945; amd. Sec. 73, Ch. 310, L. 1974; R.C.M. 1947, 46-229.

Part 3

Disease Control Area

81-2-301. Establishment of livestock disease control area — entry into area — compulsory inspection. (1) Upon receipt of a petition signed by not less than 75% of the livestock owners of the species of animals to be inspected, tested, treated, or vaccinated, representing not less than 50% of such species in any school district, as determined from the permanent records of the board of county commissioners describing school district boundaries of any county in the state of Montana, petitioning for the area control, treatment, prevention, or eradication of any dangerous disease of livestock within such school district, the board may establish such school district as a disease control area and may enforce the inspection, test, treatment, or vaccination of all livestock of the species designated within such school district in accordance with the rules promulgated by the department for the inspection, eradication, treatment, or vaccination of such livestock and may reimburse the owners of livestock slaughtered by order of the department or its authorized agent in accordance with the laws of Montana governing the payment of such animal or animals.

(2) In any circumscribed disease control area as established under this section by the department, no other livestock of the species designated by the department to be inspected, tested, treated, or vaccinated may enter the disease control area unless inspected, tested, treated, or vaccinated under the direction of the department or accompanied by a satisfactory health certificate or except under special permit and restrictions provided by the department.

(3) When 75% or more of the school districts in any county in Montana are established under this section by the department as disease control areas, it becomes mandatory on the part of the remaining livestock owners in such county to submit their livestock of one or more species for inspection, test, treatment, or vaccination, as directed by the department.

History: En. Sec. 1, Ch. 94, L. 1943; amd. Sec. 1, Ch. 27, L. 1973; amd. Sec. 11, Ch. 12, L. 1977; R.C.M. 1947, 46-212.

81-2-302. Duty of county assessor. The assessment roll of the county in which the disease control area is to be established is the basis for computing the required percentage of livestock owners and livestock. The county assessor shall certify to the department when the necessary 75% of the owners of livestock representing not less than 50% of the species of livestock to be inspected, tested, treated, or vaccinated have signed the required petition.

History: En. Sec. 2, Ch. 94, L. 1943; amd. Sec. 60, Ch. 310, L. 1974; R.C.M. 1947, 46-213.

81-2-303. Owner guilty of misdemeanor, when. A person in a disease control area who does not gather his livestock after being notified by the department or its agent to have the livestock available or who refuses to have the livestock inspected, tested, treated, or vaccinated or violates this part is guilty of a misdemeanor.

History: En. Sec. 3, Ch. 94, L. 1943; amd. Sec. 61, Ch. 310, L. 1974; R.C.M. 1947, 46-214.

Part 4

Regulation of Semen Used for Artificial Insemination

81-2-401. Definitions. As used herein:

(1) "artificial insemination" shall mean the fertilization of or the attempt to fertilize the ova of the female animal by placing and implanting by artificial means in the genital tract of the female animal the seminal fluid obtained from the male animal;

(2) "sire" shall mean the male animal of any species, including but not limited to bulls, stallions, rams, boars, studs, bucks, and cocks.

History: En. Secs. 2, 3, Ch. 37, L. 1953; R.C.M. 1947, 46-2502, 46-2503.

81-2-402. Administration by department of livestock. This part shall be administered by the department of livestock, and in addition to any powers now conferred by law, the department shall have the power and duty to promulgate such reasonable rules and orders not contrary to the provisions of this part, when required, as may be necessary for the proper administration of this part, specifically including but not limited to rules and orders relating to the means for preservation of semen and the use of semen imported into the state of Montana from other states, territories, and possessions of the United States and foreign countries.

History: En. Sec. 5, Ch. 37, L. 1953; amd. Sec. 2, Ch. 102, L. 1973; R.C.M. 1947, 46-2505.

81-2-403. Only certain sires to be used for artificial insemination. (1) All sires used for artificial insemination must be free from brucellosis, vibriosis, trichomoniasis, dourine, posthitis, pullorum disease, other transmissible, infectious, contagious diseases, transmissible hereditary malformations, and other detrimental or undesirable characteristics. Proof of fitness of these sires shall be provided to the department by the owner or parties providing the sires for artificial insemination.

(2) Semen imported into this state may not be used by any artificial inseminator until proof is made to the satisfaction of the department that the sire from which the semen was taken was free from the above-mentioned diseases.

History: En. Sec. 15, Ch. 37, L. 1953; amd. Sec. 1, Ch. 102, L. 1973; amd. Sec. 170, Ch. 310, L. 1974; R.C.M. 1947, 46-2515.

Part 5

Treatment of Garbage Fed to Swine

81-2-501. Definitions. When used in this part, the following definitions apply:

(1) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of foods, including animal carcasses or parts thereof.

(2) "Garbage feeder" means a person who handles, prepares, cooks, or otherwise treats garbage to feed to swine or other animals, as well as a person who feeds garbage to swine or other animals.

(3) "Person" means the state, any municipality, political subdivision, school district, institution, public or private corporation, individual, partnership, or other entity.

History: **En. Sec. 1, Ch. 63, L. 1953; R.C.M. 1947, 46-2601.**

81-2-502. Licenses. (1) It is unlawful to handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals or to feed garbage to swine or other animals without first securing a license for that purpose from the department of livestock. One license issued to the entrepreneur, corporation, or individual responsible for a particular garbage feeding enterprise covers all garbage feeders concerned with the enterprise. The license provided for in this section expires on December 31 of the year in which it is issued. A license fee of $5 shall be charged for all licenses issued under this part. All license fees collected shall be paid into the general fund of this state.

(2) This part does not apply to a person who feeds only his own household garbage to swine or other animals.

History: **En. Sec. 2, Ch. 63, L. 1953; amd. Sec. 171, Ch. 310, L. 1974; R.C.M. 1947, 46-2602.**

81-2-503. Applications for licenses. A person desiring to obtain a license to feed garbage to swine or other animals shall make a written application for the license to the department under the rules or orders prescribed by the department.

History: **En. Sec. 3, Ch. 63, L. 1953; amd. Sec. 172, Ch. 310, L. 1974; R.C.M. 1947, 46-2603.**

81-2-504. Power to adopt rules. The department shall administer and enforce this part and may adopt and enforce rules or orders necessary for the supervision, control, and inspection of persons who handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals or who feed garbage to swine or other animals. The rules or orders shall apply to and govern the method of applying for a license, standards and methods of operation, sanitary conditions of premises where garbage is treated for feeding or fed, the control and inspection of equipment used to store, treat, or feed garbage, and equipment, including vehicles, used for the transportation of garbage.

History: **En. Sec. 4, Ch. 63, L. 1953; amd. Sec. 173, Ch. 310, L. 1974; R.C.M. 1947, 46-2604.**

81-2-505. Entry of premises for inspection — keeping of records. (1) An authorized representative of the department may enter at reasonable times on private or public property to inspect and investigate conditions relating to the treating of garbage to be fed, or the feeding of garbage, to swine or other animals.

(2) An authorized representative of the department may examine records or memoranda pertaining to the treatment or feeding of garbage to swine or other animals. The department may require maintenance of records it considers necessary, relating to the operation of equipment for and procedure of treating or feeding garbage to swine or other animals, and may require copies of the records to be submitted to the department periodically.

History: En. Sec. 5, Ch. 63, L. 1953; amd. Sec. 174, Ch. 310, L. 1974; R.C.M. 1947, 46-2605.

81-2-506. Power to administer oaths, subpoena witnesses, and receive evidence. The department or its agent may administer oaths, subpoena witnesses, and receive evidence in order to carry out this part.

History: En. Sec. 8, Ch. 63, L. 1953; amd. Sec. 177, Ch. 310, L. 1974; R.C.M. 1947, 46-2608.

81-2-507. Power of department and board to restrain operation of garbage feeder. (1) The department may restrain the operation of a licensed garbage feeder whose operation is carried on in violation of the laws of this state or the rules or orders of the department, after a hearing held on 5 days' written notice of the hearing to the licensee. The restraining order may be issued without notice of hearing where, in the discretion of the department, the violation constitutes a menace to public or animal health requiring immediate and summary abatement.

(2) The licensee may appeal to the district court on giving written notice of appeal to the restraining authority within 10 days after service of the restraining order, whether the order is made on hearing or summarily. The written notice of appeal does not stay execution of the restraining order when the restraining order is issued without hearing to restrain a menace to public health requiring immediate and summary abatement.

(3) Where the restraining order is issued after hearing, the hearing before the district court is on the record, together with additional evidence offered. Where the order is issued without hearing, the hearing before the district court shall be upon evidence offered before the court.

History: En. Sec. 6, Ch. 63, L. 1953; amd. Sec. 175, Ch. 310, L. 1974; R.C.M. 1947, 46-2606.

81-2-508. Power to revoke license of garbage feeder. The licenses to feed garbage to swine or other animals may be revoked at any time by the department when it determines that a person to whom the license is issued has failed to comply with the laws of this state or rules or orders of the department, and on a hearing before the department, after 10 days' written notice. An appeal to the district court stays execution of an order of the department revoking a license.

History: En. Sec. 7, Ch. 63, L. 1953; amd. Sec. 176, Ch. 310, L. 1974; R.C.M. 1947, 46-2607.

81-2-509. Cooking or other treatment of garbage. All garbage, regardless of previous processing, shall, before being fed to swine or other animals, be thoroughly heated to at least 212 degrees F for at least 30 minutes, unless treated in some other manner which is approved in writing by the department as being equally effective for the protection of public and animal health.

History: En. Sec. 9, Ch. 63, L. 1953; amd. Sec. 178, Ch. 310, L. 1974; R.C.M. 1947, 46-2609.

81-2-510. Garbage originating on or removed from airplanes not to be treated or fed. Garbage originating on or removed from airplanes landing in this state may not be treated for feeding or be fed to swine or other animals. The powers granted in 81-2-505 to the department to enter on private or public property for the purpose of inspecting and investigating conditions relating to the treating of garbage to be fed to swine or other animals or the feeding of garbage to swine or other animals include the inspection and investigation of garbage disposal methods employed at airports and all facilities at airports and aircraft.

History: **En. Sec. 10, Ch. 63, L. 1953; amd. Sec. 179, Ch. 310, L. 1974; R.C.M. 1947, 46-2610.**

81-2-511. Penalties. Any person who shall violate any of the provisions of or who fails to perform any duty imposed by this part shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $50 or more than $250 or by imprisonment for a term of not more than 6 months or by both such fine and imprisonment. In addition thereto, such person may be enjoined from continuing such violation. Each day upon which such violation occurs shall constitute a separate violation.

History: **En. Sec. 11, Ch. 63, L. 1953; R.C.M. 1947, 46-2611.**

Part 6

Tuberculin Regulation

81-2-601. Tuberculin — permission for sale or distribution of. A person, firm, or corporation desiring to sell or distribute tuberculin for animal use in this state must first secure permission from the department.

History: **En. Sec. 1, Ch. 118, L. 1917; re-en. Sec. 3296, R.C.M. 1921; re-en. Sec. 3296, R.C.M. 1935; amd. Sec. 84, Ch. 310, L. 1974; R.C.M. 1947, 46-301.**

81-2-602. Report of sales or distribution. A person, firm, or corporation which has secured permission from the department to sell or distribute tuberculin for animal use in this state shall, on the same day it sells, furnishes, or supplies tuberculin, report in writing to the department the name and address of the person and a statement of the amount of tuberculin supplied to him.

History: **En. Sec. 2, Ch. 118, L. 1917; re-en. Sec. 3297, R.C.M. 1921; re-en. Sec. 3297, R.C.M. 1935; amd. Sec. 85, Ch. 310, L. 1974; R.C.M. 1947, 46-302.**

81-2-603. Violation — penalty. Any person, firm, or corporation violating any of the provisions of this part shall be guilty of a misdemeanor and punished by a fine of not less than $25 and not more than $500 or by imprisonment for not less than 30 days and not more than 90 days or both fine and imprisonment.

History: **En. Sec. 3, Ch. 118, L. 1917; re-en. Sec. 3298, R.C.M. 1921; re-en. Sec. 3298, R.C.M. 1935; R.C.M. 1947, 46-303.**

CHAPTER 3

MARKS AND BRANDS

Part 1 — Recording of Marks and Brands

Section
81-3-101. Recorder of marks and brands.
81-3-102. Recording of brands required.

81-3-103. Application for recording — record of brands.
81-3-104. Designation of years for rerecording brands.
81-3-105. Right of owner of recorded brand.
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81-3-107. Fees for department.
81-3-108. Penalty.

Part 2 — Inspection of Marks and Brands

81-3-201. Definitions.
81-3-202. Rules.
81-3-203. Duties of state stock inspectors and deputy stock inspectors.
81-3-204. Seizure of livestock — retention of livestock — sale — disposal of proceeds.
81-3-205. Fees for inspection and livestock transportation permits.
81-3-206. Commissioners to designate places for loading livestock for inspection.
Sections 81-3-207 through 81-3-209 reserved.
81-3-210. Bill of sale required to prove ownership.
81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits.
81-3-212. Exceptions.
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81-3-221. Brands fraudulently changed.
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81-3-231. Penalties.
81-3-232. Penalty for noninspection of dead animal in feedlot.
81-3-233. Penalty for removal of livestock from state without inspection — exception.

Part 1

Recording of Marks and Brands

81-3-101. Recorder of marks and brands. The department of livestock is the general recorder of marks and brands.

History: En. Sec. 2940, Pol. C. 1895; re-en. Sec. 1790, Rev. C. 1907; re-en. Sec. 3299, R.C.M. 1921; re-en. Sec. 3299, R.C.M. 1935; amd. Sec. 89, Ch. 310, L. 1974; R.C.M. 1947, 46-601.

81-3-102. Recording of brands required. It is unlawful for a person, firm, or corporation to artificially brand, mark, or cause to be artificially branded or marked any domestic animal or livestock running at large on the public domain or open range or which may run or stray at large or on the public domain or open range, unless the artificial brand or mark has been recorded or rerecorded with the department in the name of the person, firm, or corporation within the period of 10 years immediately preceding the branding or marking.

History: En. Sec. 1, Ch. 144, L. 1921; re-en. Sec. 3301, R.C.M. 1921; re-en. Sec. 3301, R.C.M. 1935; amd. Sec. 90, Ch. 310, L. 1974; R.C.M. 1947, 46-603.

81-3-103. Application for recording — record of brands. (1) A person, firm, or corporation desiring to have recorded an artificial mark or brand for use in distinguishing or identifying the ownership of any domestic animal or livestock shall make application for the mark or brand to the department. The application must be in writing and must contain the name, residence, and post-office address of the applicant and the species of the animals on which the mark or brand is to be used.

(2) The department shall designate for the applicant's use some practical form of mark or brand distinguishable with reasonable certainty from all other marks and brands recorded or rerecorded, within the period of 10 years immediately preceding the time of filing the application, in the name of some person, firm, or corporation other than the applicant. The department shall designate the position on the animals on which the mark or brand shall be placed and the species of animals on which the mark or brand may be used.

(3) The department shall keep a record in a book kept by it for that purpose of the particular mark or brand, the position on the animal where the mark or brand is to be used, the species of animals on which the mark or brand is to be used, and the date of recording. The record is a public record and is prima facie evidence of the facts recorded in it.

History: En. Sec. 2, Ch. 144, L. 1921; re-en. Sec. 3302, R.C.M. 1921; re-en. Sec. 3302, R.C.M. 1935; amd. Sec. 91, Ch. 310, L. 1974; R.C.M. 1947, 46-604.

81-3-104. Designation of years for rerecording brands. Each 10th year after 1921 is the year for rerecording artificial marks and brands used to distinguish and identify the ownership of domestic animals and livestock. The department shall, on the application of a person, firm, or corporation or the transferee of the person, firm, or corporation made in a year which is a year for rerecording marks and brands, rerecord a mark or brand which at the time of the application stands of record in the department in the name of the person, firm, or corporation. A mark or brand which was not originally recorded or rerecorded in the name of the person, firm, or corporation during the rerecording year last preceding the date when the application is filed or originally recorded in the name of the person, firm, or corporation or his or its predecessor or predecessors in interest between the time of the application and the rerecording year last preceding the application is not of record in the department.

History: En. Sec. 3, Ch. 144, L. 1921; re-en. Sec. 3303, R.C.M. 1921; re-en. Sec. 3303, R.C.M. 1935; amd. Sec. 92, Ch. 310, L. 1974; amd. Sec. 27, Ch. 12, L. 1977; R.C.M. 1947, 46-605.

81-3-105. Right of owner of recorded brand. A person, firm, or corporation in whose name a mark or brand is recorded is entitled to the exclusive use of the mark or brand on the species of animal and in the position designated in the record. A copy of the record certified by the department is prima facie evidence of this right, and the certificate is also prima facie evidence that the person, firm, or corporation entitled to use the mark or brand is the owner of all animals on which it appears in the position and on the species of animal stated in the certificate.

History: En. Sec. 4, Ch. 144, L. 1921; re-en. Sec. 3304, R.C.M. 1921; re-en. Sec. 3304, R.C.M. 1935; amd. Sec. 93, Ch. 310, L. 1974; R.C.M. 1947, 46-606.

81-3-106. Publication of notice of rerecording brands. Between January 1 and June 30 in each rerecording year, the department shall publish in at least one issue of at least one newspaper of general circulation in each county of this state, in which a newspaper is published, a notice to the effect that the year is a year for rerecording marks and brands and that no mark or brand continues of record unless rerecorded. The department shall also mail to each person, firm, and corporation in whose name a mark or brand stands of record, a similar notice addressed to the person, firm, or corporation at his or its post-office address as shown by the records in the department.

History: En. Sec. 5, Ch. 144, L. 1921; re-en. Sec. 3305, R.C.M. 1921; re-en. Sec. 3305, R.C.M. 1935; amd. Sec. 94, Ch. 310, L. 1974; R.C.M. 1947, 46-607.

81-3-107. Fees for department. The department shall charge and collect $25 for recording a new mark or brand, for recording a mark or brand transfer, or for rerecording a mark or brand. The department shall charge $2.50 for a certified copy of a record and a duplicate certificate. All fees collected shall be paid into the earmarked revenue fund for the use of the department. However, not more than 10% of the net rerecording fees after all expenses of rerecording are paid may be expended in any one year except in case of an emergency declared by the governor.

History: En. Sec. 7, Ch. 144, L. 1921; re-en. Sec. 3307, R.C.M. 1921; amd. Sec. 1, Ch. 14, L. 1929; re-en. Sec. 3307, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1949; amd. Sec. 1, Ch. 65, L. 1959; amd. Sec. 90, Ch. 147, L. 1963; amd. Sec. 1, Ch. 13, L. 1969; amd. Sec. 95, Ch. 310, L. 1974; amd. Sec. 1, Ch. 10, L. 1977; R.C.M. 1947, 46-609.

81-3-108. Penalty. Any person, firm, or corporation violating any provision of this part shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding $1,000 or imprisonment in the county jail for not to exceed 1 year or both such fine and imprisonment.

History: En. Sec. 6, Ch. 144, L. 1921; re-en. Sec. 3306, R.C.M. 1921; re-en. Sec. 3306, R.C.M. 1935; R.C.M. 1947, 46-608.

Part 2

Inspection of Marks and Brands

81-3-201. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Deputy state stock inspector" means a person designated by the department as a deputy state stock inspector, who does not receive a salary or compensation from the department.

(2) "Feedlot" means a confined livestock feeding operation where the owner or operator of the feedlot feeds livestock belonging to others for a fee.

(3) "Livestock" means any bovine animal, horse, mule, or ass regardless of its age or sex.

(4) "Person" means an individual, partnership, corporation, association, or any entity not enumerated capable of owning or controlling livestock.

(5) "State stock inspector" means an employee of the department of livestock designated by the department as a state stock inspector.

History: (1), (3) thru (5)En. Sec. 103, Ch. 310, L. 1974; amd. Sec. 1, Ch. 41, L. 1977; Sec. 46-801.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 32, L. 1974; Sec. 46-239.1, R.C.M. 1947; R.C.M. 1947, 46-239.1, 46-801.1; amd. Sec. 1, Ch. 298, L. 1979.

81-3-202. Rules. The department may adopt rules necessary to carry out this part.

History: En. Sec. 2, Ch. 59, L. 1943; amd. Sec. 2, Ch. 184, L. 1953; amd. Sec. 2, Ch. 142, L. 1957; amd. Sec. 1, Ch. 35, L. 1969; amd. Sec. 2, Ch. 149, L. 1971; amd. Sec. 2, Ch. 247, L. 1973; amd. Sec. 106, Ch. 310, L. 1974; amd. Sec. 2, Ch. 312, L. 1977; R.C.M. 1947, 46-802(5).

81-3-203. Duties of state stock inspectors and deputy stock inspectors. (1) State stock inspectors and deputy state stock inspectors, upon the application of the owner or the duly authorized agent of the owner of livestock, shall inspect the livestock which is intended for sale, removal, shipment, or slaughter at a licensed slaughter plant and issue a certificate of inspection therefor if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof.

(2) The inspection shall include an examination of the livestock and all marks and brands thereon to identify ownership of the livestock. The certificate of inspection shall be made in triplicate and shall specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, upon the animal, and any other information upon the form of certificate as the department may from time to time require. One copy of the certificate shall be retained by the inspector, one copy shall be furnished by the inspector to the owner or shipper of the livestock, and one copy shall be filed by the inspector with the department within 5 days.

(3) If it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof, the state stock inspectors or deputy state stock inspectors or any sheriff or deputy sheriff, upon application of an owner or his agent of the livestock to be consigned and delivered directly to a licensed livestock market or licensed livestock slaughterhouse located in another county of the state or delivered directly to a shipping point duly approved by the department where a livestock inspector is available for inspection in an adjoining county, shall issue to the person a separate market consignment permit or transportation permit for each owner when the owner or owners or their duly authorized agents sign the permit certifying the brands, description, and destination of the livestock. The market consignment permit or transportation permit shall be made in triplicate, shall specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock and the name and address of the person actually transporting the livestock if different than the owner, the kind of livestock, the marks and brands, if any, upon the livestock, a description of the vehicle or vehicles to be used to transport the livestock to include the license number of the vehicles, and any other information upon the form of permit as the department may from time to time require. Any permit so issued shall be good for shipment within 36 hours from date and time of issue; however, permits not used within this time limitation must be returned to the issuing officer to be canceled and to release the permittee from performance. One copy of the permit shall be retained by the inspector or sheriff's office, one copy shall be filed by the inspector or sheriff's office with the department within 5 days of the date of issue, and one copy shall be furnished by the inspector or sheriff's office to the owner or shipper of the livestock, which copy of the permit shall accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the livestock is delivered.

(4) Upon application of an owner or his agent, when it appears with reasonable certainty that the applicant is the owner of the livestock or has

lawful right to the possession thereof, a state stock inspector shall issue a transportation permit which will allow the movement of the livestock into an immediately adjoining county to land owned or controlled by the owner or his agent for purposes of grazing. The transportation permit shall state the breed, description, marks and brands, if any, head count, and description of land to and from which the livestock will be moved. The permit will be valid for 6 months. A state stock inspector may enter the premises where livestock so moved have been transported and inspect any livestock moved under the transportation permit or any livestock commingled therewith.

(5) Any person transporting strays or livestock not lawfully under his control is guilty of a misdemeanor and punishable as provided in 81-3-231.

History: En. Sec. 2, Ch. 59, L. 1943; amd. Sec. 2, Ch. 184, L. 1953; amd. Sec. 2, Ch. 142, L. 1957; amd. Sec. 1, Ch. 35, L. 1969; amd. Sec. 2, Ch. 149, L. 1971; amd. Sec. 2, Ch. 247, L. 1973; amd. Sec. 106, Ch. 310, L. 1974; amd. Sec. 2, Ch. 312, L. 1977; R.C.M. 1947, 46-802(1) thru (4); amd. Sec. 1, Ch. 235, L. 1979.

81-3-204. Seizure of livestock — retention of livestock — sale — disposal of proceeds. (1) All state stock inspectors inspecting any livestock before or after shipment or removal from any county in this state, upon a change of ownership, or at the preslaughter inspection at a licensed slaughterhouse may inspect and seize either at the point of sale, shipment, destination, or slaughter or en route any livestock or proceeds thereof which the inspector believes is stolen or upon which brands have been altered or obliterated or which does not conform to the description contained on the tally sheet furnished by the shipper thereof or to the description contained in any certificate of inspection or release issued before shipment or removal of the livestock.

(2) Upon taking possession of livestock under this section, a state stock inspector may retain the livestock in his possession for 15 days to make further investigation relative to its ownership. A state stock inspector may either at once or at any time within 15 days sell the livestock at a licensed livestock market or in the open market for the best available price and remit the proceeds, less the cost of keeping and sale, to the department together with a full description of the livestock sold, giving marks and brands, if any, and a statement of the reason for the seizure and sale. The proceeds shall be deposited by the department with the state treasurer and credited to the department fund, where it is subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock.

History: En. Sec. 3, Ch. 59, L. 1943; amd. Sec. 108, Ch. 147, L. 1963; amd. Sec. 3, Ch. 149, L. 1971; amd. Sec. 3, Ch. 247, L. 1973; amd. Sec. 107, Ch. 310, L. 1974; amd. Sec. 3, Ch. 482, L. 1977; R.C.M. 1947, 46-803; amd. Sec. 2, Ch. 235, L. 1979.

81-3-205. Fees for inspection and livestock transportation permits. (1) For the service of inspection of all livestock except horses, mules, or asses before removal from a county or before change of ownership, the inspector making the inspections shall receive 25 cents per head for 12 head or less, or $3 for 12 head to 20 head and 20 cents per head for each head over 20 head. For the issuance of a market consignment permit or transportation permit (other than a permanent permit) before removal from a county for all livestock, the inspector, sheriff, or deputy sheriff issuing the permits shall receive 25 cents for each permit issued for 12 head or less, 50 cents for each permit for 12 to 30 head, and $1 for each permit issued for over 30 head and shall receive in addition his necessary actual expenses, to be paid by the owner or the person for whom the inspection is made or permit issued. For the issuance of a permanent horse transportation permit, the state stock inspector taking the application for permit shall receive $5 per head for each permit issued. All inspection and permit fees and expenses shall be collected by the inspector, sheriff, or deputy sheriff at the time of inspection or issuance of permit, and all the fees and expenses collected by a deputy state stock inspector, sheriff, or deputy sheriff shall be retained by him, and all such fees and expenses collected by a state stock inspector shall be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

(2) For the service of inspection before any livestock except a horse, mule, or ass is sold or offered for sale at a licensed livestock market or slaughtered at a licensed slaughterhouse, a state stock inspector or deputy state stock inspector making the inspection shall receive 20 cents per head for an animal originating within the county in the state in which the market or slaughterhouse is maintained or transported under a market consignment permit or transportation permit and 10 cents per head for an animal previously inspected before removal from a county as herein provided. All fees shall be paid by the owner or by the person for whom the inspection is made. For releasing an animal so that it may be removed from the premises of a licensed livestock market, the state stock inspector making the release shall receive 20 cents per head from the owner or the person for whom the release is made. All fees for inspection and release at the market shall be collected at the time the inspection or release is made by the state stock inspector making the inspection or release and shall be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. All fees for preslaughter inspection made at a licensed slaughterhouse by the state stock inspector shall be paid to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. Preslaughter inspection fees paid to a deputy state stock inspector shall be retained by him.

(3) (a) For the service of inspection of horses, mules, or asses before removal from a county or before change of ownership, the inspector making the inspection shall receive $1 a head for the first 10 head, and 50 cents per head for each animal more than 10 and shall receive in addition his necessary actual expenses to be paid by the owner or the person for whom the inspection is made. All fees and expenses collected by a state stock inspector must be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

(b) For the service of inspection before a horse, mule, or ass is sold or offered for sale at a licensed livestock market, a state stock inspector making the inspection shall receive $1 per head. All fees shall be paid by the owner or the person for whom the inspection is made to the state stock inspector.

(4) All inspection and release fees and expenses shall be paid to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department unless paid to a deputy state

stock inspector. State stock inspectors shall be paid for their services and receive their expenses as fixed by the department.

History: **En. Sec. 4, Ch. 59, L. 1943; amd. Sec. 1, Ch. 106, L. 1949; amd. Sec. 3, Ch. 184, L. 1953; amd. Sec. 3, Ch. 142, L. 1957; amd. Sec. 93, Ch. 147, L. 1963; amd. Sec. 4, Ch. 149, L. 1971; amd. Sec. 4, Ch. 247, L. 1973; amd. Sec. 108, Ch. 310, L. 1974; amd. Sec. 4, Ch. 482, L. 1977; R.C.M. 1947, 46-804; amd. Sec. 3, Ch. 235, L. 1979; amd. Sec. 2, Ch. 298, L. 1979.**

81-3-206. Commissioners to designate places for loading livestock for inspection. The board of county commissioners must, at the request of the department, designate within their respective counties certain convenient places and provide suitable facilities for unloading and loading of livestock for inspection purposes.

History: **En. Sec. 1, Ch. 74, L. 1939; amd. Sec. 1, Ch. 211, L. 1947; amd. Sec. 101, Ch. 310, L. 1974; R.C.M. 1947, 46-709.**

81-3-207 through 81-3-209 reserved.

81-3-210. Bill of sale required to prove ownership. (1) A bill of sale signed by the seller and adequately describing the livestock sold must be presented to the livestock inspector whenever the change of ownership inspection required by 81-3-211 is made or whenever a buyer of livestock requests a county-line or state-line inspection for livestock exempt from the change-of-ownership inspection when purchased in lots of 5 head or less. The bill of sale shall be in a form prescribed by the department of livestock and shall be taken up by the department with the certificate of inspection acting as a receipt.

(2) The department shall charge and receive a fee of $2.50 for each copy of a bill of sale requested after the original bill of sale has been taken up. Fees so received shall be paid to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

History: **En. Sec. 1, Ch. 80, L. 1979.**

Compiler's Comments

Incorporation into existing law. This section was enacted without any codification instructions. The apparent intent of the Legislature was that it become part of Title 81, chapter 3, part 2, and the Code Commissioner has codified it accordingly. This arrangement may affect other sections in part 2, especially 81-3-231(5). See 1-11-103(4).

81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits. (1) For the purposes of this section:

(a) "Members of the same family" means a group whose membership is determined by including an individual, his spouse, and his parents, children, grandchildren, and the spouses of each.

(b) "Family business entity" means:

(i) a corporation whose stock is owned solely by members of the same family;

(ii) a partnership in which the partners are all members of the same family;

(iii) an association whose members all are members of the same family; or

(iv) any other entity owned solely by members of the same family.

(2) Except as otherwise provided in this part, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions, unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of such change of ownership as provided in this part. The inspection must be made in daylight. However, the change of ownership inspection requirements of this subsection do not apply when:

(a) such sale or change of ownership transaction involves five or fewer such animals; or

(b) the change of ownership transaction:

(i) is between:

(A) members of the same family;

(B) a member of one family and the same family's business entity; or

(C) the same family's business entities;

(ii) is accomplished without the livestock changing premises; and

(iii) involves part of a herd to which no livestock have been added other than by natural increase or after brand inspection.

(3) (a) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this part.

(b) It is unlawful to slaughter livestock at a licensed livestock slaughterhouse unless the livestock have been inspected for marks or brands by a state or deputy state stock inspector.

(4) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market. The release obtained pursuant to this subsection will permit the movement of the livestock so released directly to the destination shown on the certificate.

(5) The person in charge of livestock being removed from a county in this state, where inspection thereof is required by this section or where change of ownership has occurred or when moved under a market consignment permit or a market release certificate, shall have in his possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate issued in connection therewith and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector upon request. Section 81-3-204 shall be extended to livestock transported or sold under the above-mentioned permits.

(6) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for his personal use or business or where a purebred cow is being transported from county to county in this state by its owner for show purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cow described thereon. The permit becomes void upon any transfer of ownership or if the horse or cow is to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit a horse must have either a registered brand that has been legally cleared or a lip tattoo or the owner must present proof of ownership to a state stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector together with a $5 permit fee for each horse. The application shall contain a thorough physical description of the horse and list all brands and tattoos carried by the horse. Upon approval of the application by a state stock inspector, a permanent transportation permit shall be issued by the department to the owner for each horse and such permit shall be valid for the life of the horse. If there is a change of ownership in a horse the permit shall automatically become void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. Such a permit shall be automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer is being transported from county to county in this state by the owner for rodeo purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described thereon. The certificate is effective only between April 1 and October 31 of the year for which it is issued. The certificate shall be issued by a state stock inspector.

(d) An owner of livestock or his agent may be issued a transportation permit allowing the movement of his livestock into an immediately adjoining county and return when the livestock is being moved for grazing purposes and when it is being moved to and from land owned or controlled by the owner of the livestock or his agent. The permit is valid for 6 months and must be issued by a state stock inspector. The fee for the permit is $5, which shall be paid to the state stock inspector at the time the permit is issued and remitted by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. This permit may be used in lieu of the inspection and certificate required by this section for movement of livestock across a county line.

History: En. Sec. 1, Ch. 59, L. 1943; amd. Sec. 1, Ch. 176, L. 1945; amd. Sec. 1, Ch. 210, L. 1947; amd. Sec. 1, Ch. 110, L. 1949; amd. Sec. 1, Ch. 184, L. 1953; amd. Sec. 1, Ch. 142, L. 1957;

amd. Sec. 1, Ch. 9, L. 1961; amd. Sec. 1, Ch. 54, L. 1969; amd. Sec. 1, Ch. 149, L. 1971; amd. Sec. 1, Ch. 247, L. 1973; Sec. 46-801, R.C.M. 1947; amd. and redes. 46-801.2 by Sec. 102, Ch. 310, L. 1974; amd. Sec. 1, Ch. 316, L. 1975; amd. Sec. 1, Ch. 312, L. 1977; amd. Sec. 1, Ch. 482, L. 1977; R.C.M. 1947, 46-801.2; amd. Sec. 1, Ch. 190, L. 1979; amd. Sec. 4, Ch. 235, L. 1979.

81-3-212. Exceptions. Section 81-3-211 does not apply to livestock:

(1) being transported through the state in interstate commerce without leaving the custody of the carrier;

(2) transported by railroad consigned to and which, without leaving the custody of the carrier, does reach a market at which the department regularly maintains a stock inspector and a loading tally has been filed by the shipper with the carrier as provided in 81-4-607;

(3) when driven on the hoof and not moved by means of any motor vehicle, trailer, horse-drawn vehicle, railroad car, or boat by the owner from one county to the next adjoining county within the state onto land owned or controlled by the owner of livestock so moved for the purpose of pasturing, feeding, or changing the range thereof;

(4) when driven on the hoof or moved by means of a motor vehicle, trailer, horse-drawn vehicle, railroad car, or boat by the owner from one county to the next adjoining county within this state onto land owned or controlled by the owner of livestock without leaving land owned or controlled by the owner when moved for the purpose of pasturing, feeding, or changing the range thereof;

(5) when driven on the hoof from one county to an adjoining county within this state for the purpose of shipment by railroad or delivery to a licensed public market by a person who has been the owner of that livestock for a period of at least 3 months;

(6) from one county to be consigned to, and which actually reaches by means other than railroad, a licensed livestock market located in another county of the state at which the department regularly maintains a stock inspector and for which a market consignment permit has been obtained in a manner provided by law;

(7) when hauled by truck or trailer from one county to an adjoining county within the state for the purpose of shipment by railroad at which shipping point the department maintains a stock inspector or where a deputy state stock inspector is available and for which a transportation permit has been obtained in the manner provided by law.

History: En. 46-801.3 by Sec. 104, Ch. 310, L. 1974; R.C.M. 1947, 46-801.3.

81-3-213. Inspection of livestock removed from state. Except as provided for in subsections (1) and (2) of 81-3-212 and subsections (4) and (6)(b) of 81-3-211, nothing contained in this part authorizes or permits a person to remove or cause to be removed livestock from this state to a location outside of this state, unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate for the inspection has been issued in connection with and for the purpose of the transportation or removal as provided in this part.

History: En. 46-801.4 by Sec. 105, Ch. 310, L. 1974; amd. Sec. 2, Ch. 482, L. 1977; R.C.M. 1947, 46-801.4; amd. Sec. 5, Ch. 235, L. 1979.

81-3-214. Inspection of imported livestock. (1) Except as provided in subsections (2) and (3) of this section, any person owning livestock imported into this state or his agent must notify the department or a salaried employee of the department of the number, breed, type, and age of the livestock, its location, and the purpose for which it has been brought into the state. Such notification shall be made within 48 hours after the arrival of the livestock in the state. Livestock so moved may not be commingled with any livestock already in Montana until inspected for brands and marks in daylight by a state stock inspector or deputy state stock inspector. The fees for this inspection shall be the same as those imposed for county line or change of ownership inspections. The fees paid to state stock inspectors shall be remitted to the department for deposit in the earmarked revenue fund for the use of the department.

(2) Livestock consigned to a licensed livestock market or for immediate slaughter to a licensed slaughter facility at which preslaughter inspection is maintained is exempt from the requirements of this section.

(3) Livestock moved between Montana and an adjacent state for graze on a regular basis and as part of the usual operation of a farm or ranch shall be exempt from the notice and inspection requirements of this section provided a transportation permit for the entry of the livestock into Montana has been obtained by the owner or his agent from a state stock inspector prior to the entry of the livestock into Montana. The fee for the permit shall be $5 which shall be remitted by the department to the state treasury for credit to the earmarked revenue account of the department. The department shall provide by rule for the issuance and control of transportation permits authorized by this subsection.

History: En. 46-801.5 by Sec. 2, Ch. 41, L. 1977; R.C.M. 1947, 46-801.5.

81-3-215. Inspection of dead animals in feedlots. When a stock animal dies in a feedlot, the feedlot operator shall notify the board of livestock or its representative of the death. The operator may not dispose of the carcass until a livestock inspector has observed it and determined the brand of the owner of the animal. A livestock inspector observing a dead stock animal pursuant to this section shall, within 48 hours, send written notification to the owner of the animal.

History: En. Sec. 2, Ch. 32, L. 1974; R.C.M. 1947, 46-239.2.

81-3-216. Notification of department of sales of five head or less — fee. (1) A person selling five or less head of livestock at a place other than a licensed livestock market shall notify the department of the number, type, class, and marks and brands on the livestock within 10 days of the sale. He shall also notify the department of the name and address of the buyer. Livestock inspected pursuant to 81-3-211(1) and 81-3-213 are exempt from this section.

(2) The department shall prescribe the manner and form of the notification and shall receive a fee not to exceed 50 cents from the person making notification. All fees received under this section shall be paid to the department for deposit in the state treasury to the credit of the earmarked revenue account of the department.

History: En. Sec. 1, Ch. 162, L. 1979.

Compiler's Comments

Codification. Sec. 2, Ch. 162, L. 1979, provided: "Section 1 is intended to be codified as an integral part of Title 81, chapter 3, part 2, and the provisions contained in Title 81, chapter 3, part 2, apply to this section."

81-3-217 through 81-3-220 reserved.

81-3-221. Brands fraudulently changed. Whenever a mark or brand upon any neat cattle, horse, or other animal has been fraudulently altered, obliterated, or defaced so that the original mark or brand cannot be determined through the external inspection thereof, any stock inspector or sheriff may seize and kill the animal to ascertain the mark or brand so altered or defaced. Payment equal to the fair market value of the live animal shall be made after proper ownership is determined.

History: En. Sec. 2974, Pol. C. 1895; re-en. Sec. 1801, Rev. C. 1907; re-en. Sec. 3314, R.C.M. 1921; re-en. Sec. 3314, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1977; R.C.M. 1947, 46-706.

81-3-222. Compensation for animals killed. The value of the animal taken and killed shall be determined by three disinterested parties living in the vicinity where the animal is seized. The amount of money awarded to the owner is full compensation for the loss of the animal. All money disbursed under this section shall be paid out of the department's funds in the earmarked revenue fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash and the proceeds turned into the fund.

History: En. Sec. 2975, Pol. C. 1895; re-en. Sec. 1802, Rev. C. 1907; re-en. Sec. 3315, R.C.M. 1921; re-en. Sec. 3315, R.C.M. 1935; amd. Sec. 92, Ch. 147, L. 1963; amd. Sec. 100, Ch. 310, L. 1974; R.C.M. 1947, 46-707.

81-3-223. Action by dissatisfied owner — costs. Should the owner of the animal so seized and killed feel dissatisfied with the valuation made, he may maintain an action against the department or, if the animal is seized by a sheriff, against that sheriff's county, and should he fail to recover damages in any greater amount than that allowed under 81-3-222, he shall bear all costs that may be incurred in the maintenance of the action.

History: En. Sec. 2976, Pol. C. 1895; re-en. Sec. 1803, Rev. C. 1907; re-en. Sec. 3316, R.C.M. 1921; re-en. Sec. 3316, R.C.M. 1935; amd. Sec. 2, Ch. 15, L. 1977; R.C.M. 1947, 46-708.

81-3-224 through 81-3-230 reserved.

81-3-231. Penalties. (1) A person is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section if he removes livestock or causes livestock to be removed from a county in this state:

(a) without having the livestock inspected before removal if an inspection is required by law;

(b) without obtaining a market consignment permit or transportation permit if the permits are required by law;

(c) and does obtain a market consignment permit for livestock but does not deliver the livestock transported thereunder to the livestock market designated in the market consignment permit;

(d) and does obtain a transportation permit for the livestock but does not deliver the livestock transported thereunder to the destination as shown on the transportation permit and fails to have the livestock so transported inspected at the point of destination or does not file a loading tally with the carrier as provided in 81-4-607.

(2) A person who sells livestock or offers livestock for sale at a livestock market without having the livestock inspected or removes livestock or causes

livestock to be removed from a livestock market without obtaining a release is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(3) A person who ships by railroad carrier and the railroad carrier transporting livestock for which a loading tally has been filed as provided by 81-4-607 and for which shipment of livestock an inspection has not been made which after shipment causes or permits the livestock to leave the custody of the railroad carrier at a place other than where this state regularly maintains a stock inspector is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(4) A person who has in his charge livestock being removed from a county in the state for which an inspection certificate, a market consignment permit, or a market release certificate has been issued and fails to have in his possession accompanying the livestock the inspection certificate, market consignment permit, or a market release certificate as issued for the livestock, or who, having the certificate of inspection, market consignment permit, or market release certificate, fails to exhibit it to a sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector at his request is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(5) Except as specifically otherwise provided, a person violating any of the provisions of this part is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(6) Upon conviction under this section, a person, firm, association, or corporation shall be fined not less than $50 or more than $500 or imprisoned in the county jail for a period of not more than 6 months or both fined and imprisoned. Of all fines assessed and collected under this section, 50% shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the department and 50% shall be paid into the general fund of the county in which the conviction occurred.

History: **En. Sec. 6, Ch. 59, L. 1943; amd. Sec. 4, Ch. 184, L. 1953; amd. Sec. 4, Ch. 142, L. 1957; amd. Sec. 94, Ch. 147, L. 1963; amd. Sec. 109, Ch. 310, L. 1974; amd. Sec. 5, Ch. 482, L. 1977; R.C.M. 1947, 46-806; amd. Sec. 2, Ch. 14, L. 1979.**

81-3-232. Penalty for noninspection of dead animal in feedlot. A feedlot operator who violates 81-3-215 is guilty of a misdemeanor and on conviction shall be subject to imprisonment for not more than 6 months or a fine of not more than $500, or both.

History: **En. Sec. 3, Ch. 32, L. 1974; R.C.M. 1947, 46-239.3.**

81-3-233. Penalty for removal of livestock from state without inspection — exception. Any person, other than the owner or his agent or employee, who, without consent of the owner, removes or causes to be removed from this state any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal, or filly without having the same inspected where such inspection is required by law is guilty of a felony and shall be punished by a fine of not more than $2,000, by imprisonment in the state prison for a term of not more than 3 years, or by both such fine and imprisonment. The provisions of this section do not apply to any person who removes from this state any animal specified by this section for the purpose of obtaining emergency treatment for such animal by a licensed veterinarian.

History: **En. Sec. 1, Ch. 173, L. 1961; amd. Sec. 28, Ch. 12, L. 1977; R.C.M. 1947, 46-808.**

CHAPTER 4

CONTAINMENT OF LIVESTOCK

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Part 1

Fences

81-4-101. Legal fences defined. Any one of the following, if not less than 44 inches or more than 48 inches in height, shall be a legal fence in the state of Montana:

(1) all fences constructed of at least three barbed, horizontal, well-stretched wires, the lowest of which must not be less than 15 inches or more than 18 inches from the ground, securely fastened as nearly equidistant as possible to substantial posts firmly set in the ground or to well-supported leaning posts not exceeding 20 feet apart or 33 feet apart where two or more stays or pickets are used equidistant between posts. All corral fences which are used exclusively for the purposes of enclosing stacks which are situated outside of any lawful enclosure shall not be less than 16 feet from such stack so enclosed and shall be substantially built with posts not more than 8 feet distant from each other and not less than five strands of well-stretched barbed wire and shall not be less than 5 or more than 6 feet high. Any kind of a fence equally as effectual for the purpose of a corral fence may be made in lieu thereof.

(2) all fences constructed of any standard woven wire not less than 28 inches in height, securely fastened to substantial posts not more than 30 feet apart, provided that two equidistant barbed wires shall be placed above the same at a height of not less than 48 inches from the ground;

(3) all other fences made of barbed wire, which shall be as strong and as well calculated to protect enclosures as those above described;

(4) all fences consisting of four boards, rails, or poles with standing or leaning posts not over 17 feet and 6 inches apart, provided that, if leaning posts are used, there shall be a pole or wire fastened securely on the inside of the leg or support of such leaning post;

(5) all rivers, hedges, mountain ridges and bluffs, or other barriers over or through which it is impossible for stock to pass.

History: En. Sec. 1, p. 46, L. 1881; amd. Sec. 1, p. 76, L. 1885; amd. Sec. 1111, 5th Div. Comp. Stat. 1887; amd. Sec. 3250, Pol. C. 1895; amd. Sec. 1, p. 139, L. 1901; amd. Sec. 1, Ch. 37, L. 1905; amd. Sec. 1, Ch. 64, L. 1913; amd. Sec. 1, Ch. 163, L. 1919; re-en. Sec. 3374, R.C.M. 1921; re-en. Sec. 3374, R.C.M. 1935; R.C.M. 1947, 46-1401.

81-4-102. Construction of auto pass not to deprive legal fence of character. There may be maintained in a legal fence a pass so constructed that automobiles and trucks may pass over the same and which will prevent the passage of livestock across said opening without depriving such fence of the character of a legal fence under the laws of this state.

History: En. Sec. 3, Ch. 153, L. 1933; re-en. Sec. 4486.3, R.C.M. 1935; R.C.M. 1947, 16-1129.

81-4-103. Civil liability. Any person constructing or maintaining any fence of any kind not described in 81-4-101 is liable in a civil action for all damages caused by reason of injury to stock resulting from such defective fence.

History: En. Secs. 1112 to 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3251, Pol. C. 1895; re-en. Sec. 2083, Rev. C. 1907; re-en. Sec. 3375, R.C.M. 1921; re-en. Sec. 3375, R.C.M. 1935; R.C.M. 1947, 46-1402.

81-4-104. Barbed wire fences to be kept in repair. The owners of barbed wire fences must keep the same in repair, and any person receiving notice in writing that his barbed wire fence or any part thereof is down or in such condition as to be likely to injure any livestock and fails or refuses to repair such fence is liable to pay damages in an amount equal to the value of any cattle, horses, mules, or other domestic animals which may be injured by coming into contact with the fence.

History: En. Secs. 1112 to 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3252, Pol. C. 1895; re-en. Sec. 2084, Rev. C. 1907; re-en. Sec. 3376, R.C.M. 1921; re-en. Sec. 3376, R.C.M. 1935; R.C.M. 1947, 46-1403.

81-4-105. Fallen wire fencing declared nuisance — abatement. All barbed wire and other wire fencing which has sagged or fallen to the ground so as to be ineffectual for the purpose of turning stock and a menace to any person riding or walking over the same is declared to be a public nuisance and subject to abatement in the manner hereinafter provided.

History: En. Sec. 1, Ch. 84, L. 1927; re-en. Sec. 3376.1, R.C.M. 1935; R.C.M. 1947, 46-1404.

81-4-106. Notice to owner to repair fence — duty of county commissioners. Upon ascertaining the existence in the county of any nuisance specified in 81-4-105, the board of county commissioners shall notify by registered or certified mail the owner of such wire, if such owner be known to said board and within the state, to remove same. If such owner shall fail to remove said wire or to rebuild said fence within 60 days following receipt of said notice, the board of county commissioners shall have authority to remove and dispose of said wire in the manner provided by 81-4-107.

History: En. Sec. 2, Ch. 84, L. 1927; re-en. Sec. 3376.2, R.C.M. 1935; R.C.M. 1947, 46-1405.

81-4-107. Procedure when owner unknown or not resident of state — sale of wire removed. If there is no known owner of such wire within the state or if such owner is unknown to the board of county commissioners, the board may collect and remove the wire at the expense of the county. All such wire or other fencing as in the opinion of the board of county commissioners can be sold at a price sufficient to cover at least the expense of removal and sale shall be sold by the county commissioners in the manner provided by law for the sale of county property, except that notice of such sale need be published only once and need be given only 10 days before such sale.

History: En. Sec. 3, Ch. 84, L. 1927; re-en. Sec. 3376.3, R.C.M. 1935; amd. Sec. 50, Ch. 12, L. 1977; R.C.M. 1947, 46-1406.

81-4-108. Disposal of proceeds of sale of wire after payment of expense. The proceeds of such sale shall be used to defray the cost of collecting and selling said wire, and the balance, if any, shall be placed by the county treasurer in a special fund and shall be held by him subject to claim by any person establishing to the satisfaction of the board of county commissioners that he was the lawful owner of said wire and entitled to the remaining proceeds of such sale. If no person claims said money within 1 year of the date of sale, the same shall be deposited in the general fund of the county.

History: En. Sec. 4, Ch. 84, L. 1927; re-en. Sec. 3376.4, R.C.M. 1935; R.C.M. 1947, 46-1407.

Part 2

Animals Unlawfully Running at Large

81-4-201. Swine, sheep, and goats running at large. It shall be unlawful for any owner or person in control of swine, sheep, or goats to willfully permit the same to run at large.

History: En. Sec. 1165, Pen. C. 1895; re-en. Sec. 8838, Rev. C. 1907; re-en. Sec. 3393, R.C.M. 1921; re-en. Sec. 3393, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1945; R.C.M. 1947, 46-1704.

81-4-202. Penalties. (1) Any person violating 81-4-201 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of $10 for the first offense and in the sum of $20 for each subsequent offense and shall be liable in damage to any party injured thereby, to be recovered in any court having competent jurisdiction.

(2) All fines collected under the provisions of this section shall be paid into the county treasury for the use and benefit of the public schools.

History: (1)En. Sec. 1166, Pen. C. 1895; re-en. Sec. 8839, Rev. C. 1907; re-en. Sec. 3394, R.C.M. 1921; re-en. Sec. 3394, R.C.M. 1935; Sec. 46-1705, R.C.M. 1947; (2)En. Sec. 1167, Pen. C. 1895; re-en. Sec. 8840, Rev. C. 1907; re-en. Sec. 3395, R.C.M. 1921; re-en. Sec. 3395, R.C.M. 1935; Sec. 46-1706, R.C.M. 1947; R.C.M. 1947, 46-1705, 46-1706.

81-4-203. Open range defined. In 81-4-204, 81-4-207, and 81-4-208, the term "open range" means all lands in the state of Montana not enclosed by a fence of not less than two wires in good repair. The term "open range" includes all highways outside of private enclosures and used by the public whether or not the same have been formally dedicated to the public.

History: En. Sec. 1, Ch. 63, L. 1925; amd. Sec. 1, Ch. 85, L. 1931; re-en. Sec. 3400.1, R.C.M. 1935; R.C.M. 1947, 46-1707(part).

81-4-204. Male equine animals not to run on open range. It shall be unlawful for any owner, person, firm, corporation, or association having the management or control of any stallion, ridgeling, unaltered male mule, or jackass over the age of 1 year to permit or suffer such animal to run at large on the open range.

History: En. Sec. 1, Ch. 63, L. 1925; amd. Sec. 1, Ch. 85, L. 1931; re-en. Sec. 3400.1, R.C.M. 1935; R.C.M. 1947, 46-1707(part).

81-4-205. Male equine animals running at large as nuisance — abatement. Any such animal so running at large is a public nuisance, which, in addition to the means and proceedings prescribed by this part for its abatement and removal, may be abated and removed by the means and proceedings provided by law for the abatement or removal of public nuisances.

History: En. Sec. 2, Ch. 63, L. 1925; amd. Sec. 2, Ch. 85, L. 1931; re-en. Sec. 3400.2, R.C.M. 1935; amd. Sec. 52, Ch. 12, L. 1977; R.C.M. 1947, 46-1708.

81-4-206. Killing animal to prevent injury not prohibited. Sections 81-4-203 through 81-4-209 are not intended and shall not be interpreted or understood to limit or deny the right now existing to destroy or kill any such animal to prevent injury by it to any person or property.

History: En. Sec. 5, Ch. 63, L. 1925; amd. Sec. 5, Ch. 85, L. 1931; re-en. Sec. 3400.5, R.C.M. 1935; R.C.M. 1947, 46-1711.

81-4-207. Castration of animals running at large — notice to owner — expense and charges. (1) Any person may take up and secure any such animal found running at large on the open range. After taking it up he shall, without unnecessary delay, post at the United States post office or as near as may be to the place where the animal was taken up a notice truly dated and subscribed by him or his agent to the effect that the animal, describing it by marks and brands (if any), color, and sex, was taken up on the day named while it was running at large on the open range in the county (naming the county) and that, unless claimed and removed within 5 days next after the date of the posting, the animal will be castrated at the expense of the owner thereof. Should the owner, person, firm, corporation, or association having management or control of such animal be known to the person who took the animal up, personal service of such notice upon the owner, person, firm, corporation, or association having management or control of the animal shall be the equivalent to the posting. The notice, if personally served, may state that, unless the animal is claimed and removed within 2 days next after the date of the notice served personally, the animal will be castrated at the expense of the owner thereof.

(2) If such animal so taken up be not claimed and removed within said 5 days or said 2 days, as the case may be, it may lawfully be castrated in the usual manner and doing no more harm than is necessary. The expense of castration shall be paid by the owner. If such animal be claimed within the time herein prescribed, the claimant shall pay to the person who took the animal up the reasonable expense of the keeping and feed thereof since it was taken up and also the sum of $5 for the taking up and giving of the notice aforementioned. Upon making such payments the claimant shall immediately remove and take away said animal.

History: En. Sec. 3, Ch. 63, L. 1925; amd. Sec. 3, Ch. 85, L. 1931; re-en. Sec. 3400.3, R.C.M. 1935; R.C.M. 1947, 46-1709.

81-4-208. Killing of animal running at large — notice — posting and service. (1) If any such animal so running at large cannot, by reasonable effort, be captured, taken up, or corralled, it may lawfully be killed unless the owner or person having the management or control of it shall take the animal off the open range and restrain it from running at large thereon within 10 days next after the giving of notice as hereinafter provided. The notice shall be signed by one or more taxpayers of the vicinity of the range whereon such animal be at large and be substantially as follows:

"To whom it may concern:

Take notice, that a certain (stallion, ridgeling, unaltered male mule, or jackass, as the case may be) is running at large on the open range (identify the range by general description) in .... County, Montana. Unless said animal be removed therefrom and restrained from running at large on open range, within 10 days next after the date of this notice, it will be killed.

(Date) (Signature or signatures)"

(2) The notice shall be posted at the post office nearest the place where the animal was last seen on the range and like notices in two other of the most public places in the vicinity of said range, and like notice shall at once be mailed to the owner or person having management or control of the animal, if his name and address be known.

History: En. Sec. 4, Ch. 63, L. 1925; amd. Sec. 4, Ch. 85, L. 1931; re-en. Sec. 3400.4, R.C.M. 1935; R.C.M. 1947, 46-1710.

81-4-209. Penalty for violations. Any owner, person, firm, corporation, or association violating any provisions of 81-4-203 through 81-4-209 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $10 or more than $25.

History: En. Sec. 6, Ch. 63, L. 1925; amd. Sec. 6, Ch. 85, L. 1931; re-en. Sec. 3400.6, R.C.M. 1935; R.C.M. 1947, 46-1712.

81-4-210. Only purebred bulls to run at large — limitation on time. It shall be unlawful for any person or persons, firm, company, or corporation to turn upon or allow to run at large on the public highways, open range, or national forest reserve within the state of Montana any bull other than a purebred bull of a recognized beef type; and no bull shall be turned upon or allowed to run at large upon any such public highways, open range, or national forest reserve between December 1 and June 1 of each and every year.

History: En. Sec. 1, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3403, R.C.M. 1921; amd. Sec. 1, Ch. 53, L. 1925; re-en. Sec. 3403, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1943; R.C.M. 1947, 46-1716.

81-4-211. Female breeding cattle, purebred bull to accompany. (1) Any person, persons, firm, company, or corporation allowing or permitting female breeding cattle to run at large upon the public ranges or national forest reserves in the state of Montana must place upon the range or national forest reserve one purebred graded bull of a recognized beef type, not less than 15 months or more than 8 years of age, for every 30 head of female breeding cattle pastured upon such range or national forest reserve. Any two or more such users of the public range or national forest reserve may join together in furnishing such bull when the aggregate number of female breeding cattle turned loose upon the same range or national forest reserve by such two or more users thereof does not exceed 30 head.

(2) A purebred bull as contemplated by 81-4-210 through 81-4-213 must be a bull having a registration certificate from the breeding association of its particular breed. A graded bull, as defined in 81-4-210 through 81-4-213, shall be a purebred bull selected by a committee of permittees.

History: En. Sec. 2, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3404, R.C.M. 1921; re-en. Sec. 3404, R.C.M. 1935; amd. Sec. 1, Ch. 40, L. 1957; amd. Sec. 53, Ch. 12, L. 1977; R.C.M. 1947, 46-1717.

81-4-212. Castration of violating bulls. Any bull found running at large on the open range or national forest reserve in violation of the provisions of 81-4-210 through 81-4-213 may be caught and castrated by any person finding such a bull, provided any purebred dairy bull found running at large may be taken up and the party holding the bull shall notify the owner in person, and if the owner of such bull does not take possession of said bull within 24 hours after being notified, the party holding such bull may castrate him.

History: En. Sec. 4, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3406, R.C.M. 1921; re-en. Sec. 3406, R.C.M. 1935; R.C.M. 1947, 46-1719.

81-4-213. Penalty. Any person or persons, firm, company, or corporation violating any of the provisions of 81-4-210 through 81-4-213 shall be guilty of a misdemeanor and punishable by a fine of not less than $25 or more than $250.

History: En. Sec. 3, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3405, R.C.M. 1921; re-en. Sec. 3405, R.C.M. 1935; R.C.M. 1947, 46-1718.

81-4-214. Branding cattle running at large. Every person save only an owner, and he only when branding on his own premises and in the presence of two responsible citizens, who marks or brands any calf or cattle that are running at large between December 1 and May 10 of the next ensuing year, and every person who shall at any time brand or cause to be branded or marked, any horse, mule, cattle or head of cattle, sheep, swine, or other animal, 1 year old or older, with any piece of metal or implement, other than a branding iron, which branding iron shall be of the same design as the brand or mark owned by the party using it, or who shall so mark or brand, or cause to be marked or branded any of the animals aforesaid with any piece or pieces of iron called "running irons", such as bars, rings, half or quarter circles is punishable by imprisonment in the county jail for not exceeding 6 months, or by a fine of not less than $25 or more than $500, or both.

History: En. Sec. 1189, Pen. C. 1895; re-en. Sec. 8863, Rev. C. 1907; re-en. Sec. 11553, R.C.M. 1921; re-en. Sec. 11553, R.C.M. 1935; Sec. 94-3522, R.C.M. 1947; redes. 46-1720 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-1720.

81-4-215. Liability of owners of stock for trespass. If any cattle, horses, mules, asses, hogs, sheep, bison, or other domestic animals break into any enclosure, the fence being legal as provided in 81-4-101, the owner of such animals is liable for all damages to the owner or occupant of the enclosure which may be sustained thereby. This section must not be construed so as to require a legal fence in order to maintain an action for injury done by animals running at large contrary to law.

History: En. Sec. 1119, 5th Div. Comp. Stat. 1887; re-en. Sec. 3258, Pol. C. 1895; re-en. Sec. 2090, Rev. C. 1907; re-en. Sec. 3378, R.C.M. 1921; re-en. Sec. 3378, R.C.M. 1935; amd. Sec. 1, Ch. 199, L. 1977; R.C.M. 1947, 46-1409.

81-4-216. Damage to planted trees. In case of any damage done to planted trees by animals, the owner of the trees may recover damages from the owner of the animals, if said trees are planted inside of a lawful fence or boxed to a height of not less than 5 feet.

History: En. Sec. 3281, Pol. C. 1895; re-en. Sec. 2096, Rev. C. 1907; re-en. Sec. 3377, R.C.M. 1921; re-en. Sec. 3377, R.C.M. 1935; R.C.M. 1947, 46-1408.

81-4-217. Retention of trespassing stock. (1) If an animal breaks into an enclosure surrounded by a legal fence or is wrongfully on the premises of another, the owner or occupant of the enclosure or premises may take into his possession the trespassing animal and keep the animal until all damages, together with reasonable charges for keeping and feeding the animal, are paid. The person who takes the animal into his possession shall, within 72 hours after he takes possession, give written notice to the owner or person in charge of the animal, stating that he has taken the animal. The notice shall also give the date of the taking, the description of the animal taken, including marks and brands, if any, the amount of damages claimed, the charge per head per day for caring for and feeding the animal, and the description, either by legal subdivisions or other general description, of the location of the premises on which the animal is held. In all cases a copy of the notice shall also be posted at a point where the animal was taken.

(2) The notice shall be given to the owner or person in charge only when the owner or person in charge of the animal is known to the person taking the animal and resides within 25 miles of the premises on which the animal was taken. If the owner or person in charge of the animal resides more than

25 miles from the place of the taking, the notice shall be mailed to him. In this case or if the owner is unknown, a similar notice shall be mailed to the department of livestock and the sheriff of the county in which the animal has been taken. On receipt of the notice, the sheriff shall post a copy of the notice at the courthouse and shall send by certified mail a copy of it to the owner of the stock, if known to him. If unknown to him, the sheriff shall send a copy of the notice to the nearest state livestock inspector.

(3) If the parties within 5 days thereafter do not agree to the amount of damages, the claimant must within 10 days thereafter institute a civil action to collect his claim in a court of competent jurisdiction. Pending the outcome of the suit, the person taking the stock may, at the expense of the owner, retain a sufficient number of animals to cover the amount of damages claimed by him. The defendant may, after the institution of the action, on filing a bond executed by two or more sureties and approved by the court in double the sum sued for, conditioned upon the payment to the plaintiff of all sums, including costs that may be recovered by the plaintiff, have all livestock returned to him. The claimant is liable to the owner for any loss or injury to the stock occurring through his fault or neglect. If the claimant fails to recover in the action a sum equal to that offered him by the owner of the stock, the claimant bears the expense of keeping and feeding the stock while in his possession.

(4) A person who takes or rescues an animal from the possession of the person taking the animal, without his consent, is guilty of a misdemeanor and shall be fined not less than $100 or more than $500.

History: En. Sec. 8, p. 48, L. 1881; re-en. Sec. 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3259, Pol. C. 1895; re-en. Sec. 2091, Rev. C. 1907; amd. Sec. 1, Ch. 231, L. 1921; re-en. Sec. 3379, R.C.M. 1921; re-en. Sec. 3379, R.C.M. 1935; amd. Sec. 146, Ch. 310, L. 1974; amd. Sec. 51, Ch. 12, L. 1977; R.C.M. 1947, 46-1410.

81-4-218. Marking land and mining claims in national forest. It shall be the duty of the owner or the person holding possessory right to all unfenced lands or patented or unpatented mining claims, which said lands or patented or unpatented mining claims lie within the boundary of national forest reserves in the state of Montana or which lie on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

History: En. Sec. 1, Ch. 222, L. 1921; re-en. Sec. 3380, R.C.M. 1921; re-en. Sec. 3380, R.C.M. 1935; amd. Sec. 1, Ch. 31, L. 1963; R.C.M. 1947, 46-1411.

81-4-219. Method of marking. For the purposes of 81-4-218 through 81-4-220, it shall be prima facie evidence that such boundaries are properly marked if the same are defined; provided that such monuments or some tree, stump, or post adjacent thereto shall be conspicuously marked with the name of the owner or claimant of such ground and the name of the claim or the description of the land claimed.

History: En. Sec. 2, Ch. 222, L. 1921; re-en. Sec. 3381, R.C.M. 1921; re-en. Sec. 3381, R.C.M. 1935; R.C.M. 1947, 46-1412.

81-4-220. Marking — right of action against trespassing stock. No person owning or possessing agricultural or grazing land or patented or unpatented mining claims lying within said national forest reserves of this state or on the public range lying adjoining to any said national forest reserve, the boundaries of which said lands are not marked as required by the provisions of 81-4-218 through 81-4-220, shall have any claim or cause of action or right of action against the owner of sheep, cattle, or other livestock under the charge of a herder for trespass committed by such livestock upon said land, and such shall be the rule regardless of whether the said livestock so trespassing strayed thereon on their own inclination and without being driven or whether said livestock were herded or driven on said land, provided that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to. In no event shall damages other than nominal damages be assessed against said trespass unless the landowner or his duly authorized agent shall, within 6 months after said trespass has been committed, give said trespasser written notice demanding a sum certain for damages sustained by reason of such trespass.

History: En. Sec. 3, Ch. 222, L. 1921; re-en. Sec. 3382, R.C.M. 1921; amd. Sec. 1, Ch. 78, L. 1927; re-en. Sec. 3382, R.C.M. 1935; amd. Sec. 2, Ch. 31, L. 1963; R.C.M. 1947, 46-1413.

Part 3

Herd Districts

81-4-301. Herd districts — creation, size, and location. (1) Herd districts may be created in any county in the state of Montana upon petition of owners or possessors of 55% of the land in such district and providing 25% or more of the land in such district is in actual cultivation or being used for residential purposes. Such districts must contain 12 square miles or more, lying not less than 1 mile in width, outside of the incorporated cities, except that herd districts may be created containing not less than 6 or more than 54 square miles, lying not less than 2 miles in width, when such territory joins and is contiguous with the boundaries of a city having a population of 10,000 or more and such territory so to be created in a herd district has a suburban population of not less than 200 people.

(2) In formation of such a district the entire holding of any owner or lessee must be included unless such owner or lessee consents that less than his entire contiguous holdings be included in the petition.

(3) Such petition shall designate the months of the year when the herd district is effective, and upon presentation and filing of such petition, properly signed, giving the outside boundaries and description of the proposed district and the post-office address of the signers thereto, with the clerk and recorder in the county in which the said district is being created, the county commissioners of such county, upon receipt thereof, shall set a date for hearing protests and verifying the signatures thereto and shall give not less than 20 days' notice of the same by three publications in a newspaper of general circulation in the county of the proposed district. At the hearing held pursuant to such notices, the county commissioners shall examine the petition and shall cause a map to be made in order to determine the shape and regularity of the boundaries of the proposed district. The commissioners may then establish the district, but such district shall be established only in such

manner that the district will be reasonably regular and symmetrical in shape or practicable in relation to the geographical features of such district. It is not required that the boundaries of any district follow section lines to meet the requirement of reasonably regular and symmetrical boundaries.

(4) Should it appear to such county commissioners after such hearing that the signatures attached to such petition were genuine, they shall immediately declare such herd district created and established; after which the county commissioners must give notice by four weekly publications in some newspaper nearest the district of the creation of such districts, also stating the period such districts will be in effect. Such districts shall not be in effect until 30 days have expired after the order.

(5) Upon petition of any owner or possessor of lands lying contiguous and adjoining any herd district theretofore created and upon like hearing and notice as hereinabove provided for, such lands shall be included in said herd district and become a part thereof. Should the signature of lessee appear on the petition creating or abolishing any herd district, the owner or owners of said land may appear either in person or agent and enter their protest and the board of county commissioners shall remove the name of the lessee from said petition, and no person shall be permitted to withdraw his name after the hour set for hearing same.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(a); amd. Sec. 1, Ch. 488, L. 1979.

Compiler's Comments

Validation. Sec. 5, Ch. 488, L. 1979, provided: "No herd district established prior to [the effective date of this act] may be held invalid because the boundaries do not follow section lines."

Effective date. Sec. 6, Ch 488, L. 1979, provided: "This act is effective on passage and approval." Approved April 9, 1979.

81-4-302. Dissolution. (1) When a petition praying that any established herd district be dissolved is filed with the county clerk and recorder of the county wherein such district has been established and it is set forth therein that such petition is signed by the owners or possessors of 55% or more of the lands lying within such district and that less than 25% of the lands included in such district is in actual cultivation, the said county clerk and recorder shall call such petition to the attention of the board of county commissioners of the county at its next regular meeting. At said meeting by its order the board shall set such petition for hearing at a specified time on a day certain of which notice shall be given by publication at least once in each week for 3 successive weeks in some newspaper of general circulation in the county.

(2) At the time fixed for hearing, the board of county commissioners shall first require proof of publication of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties. At the conclusion of any such hearing, if the board of county commissioners shall find that notice of hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of 55% or more of the lands lying within such herd district have signed the petition and request that such district be dissolved and that less than 25% of the lands included in such district are in actual cultivation, then the board shall forthwith

spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the herd district is thereby dissolved. Forthwith, upon the making and entry of any such order aforesaid, the herd district affected thereby shall be dissolved for all purposes thereafter.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(b).

81-4-303. Exclusion of government land. Any tract of land embraced within any established herd district and which contains 18 sections of government land or more, so located that at least one-fourth of the perimeter of such tract coincides with the existing boundaries of such herd district, may be excluded therefrom upon proceedings had before the board of county commissioners of the county wherein the said district has been established on a like petition, notice, and hearing and by a like order as in the case of proceedings for dissolving herd districts. When the exclusion of any such tract of land from an existing herd district is sought, the petition shall describe the tract to be excluded with common certainty and shall set forth that it is signed by the owners or possessors of 55% or more of the lands lying within the boundaries of the tract to be excluded and that less than 15% of the lands included in such tract is in actual cultivation. In any such case if the board of county commissioners at the conclusion of the hearing had shall find that the tract of land to be excluded conforms to the requirements of this section and that the allegations of the petition are true, its findings to that effect shall be spread upon the minutes and the board shall thereupon enter its order in terms that by reason of such findings and of the proceedings had upon such petition the tract of land described in the petition, which shall be further set forth with common certainty in the order, is thereby excluded from such herd district for all purposes thereafter. Forthwith upon the making and entry of any such order of exclusion the tract of land therein described shall be deemed for all purposes thereafter to be excluded from and to form no part of the herd district affected thereby.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(c).

81-4-304. Joint herd districts. Herd districts may be created jointly between any two or more counties of the state of Montana where the lands to be included in the district meet the requirements of this section and either extend across county boundaries under one ownership or are contiguous to the land of owners in the adjoining county wishing to participate in the herd district. The county commissioner boards of each county desiring to participate in a joint herd district shall comply with all the provisions of this section dealing with single-county districts. A joint herd district shall be created only after approval by all county commissioner boards of participating counties as provided for single-county herd districts in this section. Joint herd districts may be dissolved in the same manner as single-county herd districts.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec.

1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(d).

81-4-305. Changing time when herd districts will be in effect — petition — notice — hearing. The time of year or period when any herd district heretofore or hereafter created under the provisions of the laws of this state is effective or will be in effect may be changed as herein provided, by the board of county commissioners of the county in which such herd district has been created, upon the presentation and filing with the clerk and recorder of such county a petition signed by the owners or possessors of 55% of the land in such district. Such petition shall designate the months of the year when such herd district is effective and designate the contemplated change. Upon receipt thereof, the county commissioners of such county shall set a date for hearing protests and verifying the signatures thereto and shall give not less than 20 days' notice of the same by posting five notices of hearing in five public places in the county, one of which shall be at the place such hearing is to be held and at least two of such notices to be posted within such herd district. Should it appear to the board of county commissioners after such hearing that the signatures attached to such petition are genuine, they shall immediately make an order changing the period of time such herd district will be in effect, as designated in such petition; after which the county commissioners must give notice by four weekly publications in some newspaper in the county nearest such district, stating the period such district will be in effect. The change of time shall not become effective until such notice has been published as herein provided. Upon the fourth publication of such notice, such change of time shall become effective and violation thereof shall be punished as provided under the laws of the state of Montana relative to herd districts.

History: En. Sec. 1, Ch. 78, L. 1931; re-en. Sec. 3389.1, R.C.M. 1935; R.C.M. 1947, 46-1507.

81-4-306. Penalty for permitting animals to run at large in herd districts. (1) Any person who is the owner or entitled to the possession of any horses, mules, cattle, sheep, asses, hogs, or goats, who shall willfully permit same to run at large within any herd district, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $250 for each offense. Each day that each five head or less of such horses, mules, cattle, sheep, asses, hogs, or goats are willfully permitted to run at large shall constitute a separate offense.

(2) Any person who is the owner or entitled to the possession of any bull, stallion, or jackass over 1 year of age who shall willfully permit same to run at large within any herd district shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $250 for each offense. Each day that such bull be permitted to run at large shall constitute a separate offense.

History: En. Ch. 74, L. 1917; amd. Sec. 3, Ch. 167, L. 1919; re-en. Sec. 3385, R.C.M. 1921; amd. Sec. 1, Ch. 45, L. 1925; re-en. Sec. 3385, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1945; R.C.M. 1947, 46-1502; amd. Sec. 2, Ch. 488, L. 1979.

Compiler's Comments

Effective date. Sec. 6, Ch. 488, L. 1979, provided: "This act is effective on passage and approval." Approved April 9, 1979.

81-4-307. Trespassing animals in herd district — retention for damages and keep. (1) If any such animal or animals wrongfully enter upon premises of any person within such district, the owner or person in control of such animal or animals shall be liable for care and feed and for any damages occasioned by such livestock to the landowner. The owner or occupant of the land upon which such wrongful entry is made may take into his possession such animal or animals and reasonably care for the same and may retain possession thereof and be entitled to a lien thereon as security for the payment of damages and charges occasioned by such livestock. If the owner of such livestock or the person entitled to the possession thereof can be found or is known to the person who takes it up for trespass, it shall be his duty to notify the owner, owners, or persons in charge thereof within 48 hours after taking possession thereof by a notice in writing, duly mailed as a registered or certified letter, directed to such owner or person in charge at his post-office address or by serving such notice on him personally. The notice shall give a particular description of the livestock and state the amount of damages claimed and demand that within 48 hours after receipt of such notice the damages and costs be paid and that the animal or animals be taken away from the property of the complainant.

(2) Upon demand and upon payment of the damages and charges, the owner or occupant of the land shall release and deliver possession of such stock to the owner or person entitled thereto. If the parties cannot agree upon the amount, then the owner or person entitled to said stock shall give a receipt to the owner or occupant of the land having possession of the same, which receipt shall fully describe the animal or animals so that they may at any time be easily identified, and thereupon the owner or occupant of the land shall give possession of such livestock to the owner or person entitled thereto, making claim therefor. The owner or person so receiving possession of such livestock shall not dispose of the same but shall retain and keep the same in his possession as the legal custodian thereof in order to meet and pay the amount of the lien thereon for damages and charges due in consequence of any such trespass.

(3) The party entitled to such damages or charges shall within 10 days after delivery of possession of such livestock commence an action in any court having jurisdiction to recover such damages and charges, and such livestock shall be held for the payment of any judgment as effectually as though held under a writ of attachment. At any time after such action is commenced, the owner or person entitled to the stock, to whom delivery of possession was made, may furnish and file a bond conditioned to pay the damages, charges, and costs incurred in the action, and upon approval of the bond by the justice of the peace, if the action is commenced in a justice court, or by the judge or clerk of the district court, if the action is commenced in the district court, the lien and claim upon the livestock shall thereupon be discharged.

(4) If the owner or person entitled to such livestock does not furnish such a bond within 10 days after the service of summons in the action, an order may be issued authorizing and directing the constable or sheriff to take possession and hold the stock to satisfy any judgment which may be recovered in the action, and such stock, when so taken possession of by the officer, shall be held, treated, and sold under execution the same as though seized and held in the first instance by writ of attachment.

(5) The owner or person entitled to the stock may, in lieu of furnishing a bond, deposit an amount of money sufficient to pay any judgment which may be recovered in such action, the amount to be determined by the justice or judge of the court in which the action is pending. If the owner or person entitled to the livestock, after delivery of possession to him without payment of damages and charges herein provided for, shall sell or dispose of the same or any part thereof or permit the same to be taken from his possession or shall in any manner prevent the seizure of the same by the constable or sheriff, as herein provided, before the lien thereon is fully discharged, he shall be guilty of a misdemeanor and in addition thereto shall be liable to the party entitled to such damages and charges in double the value of the stock. At the time of delivery or possession of such stock [to] the owner or person entitled thereto, a written statement of the amount of the damages and charges shall be furnished to the owner or person entitled to the possession of the stock by the person claiming such damages and charges.

(6) If the owner or claimant of such stock is not known to the person taking up such stock, he shall give notice thereof within 48 hours by posting a notice at the nearest post office and serving a like notice on the stock inspector of the district, which notice shall describe each animal or animals, the brand thereon, and give a minute description thereof, together with the date of the trespass.

History: **En. Ch. 74, L. 1917; amd. Sec. 4, Ch. 167, L. 1919; re-en. Sec. 3386, R.C.M. 1921; amd. Sec. 1, Ch. 165, L. 1931; re-en. Sec. 3386, R.C.M. 1935; R.C.M. 1947, 46-1503.**

81-4-308. Retrieval of impounded animals a misdemeanor — penalty. Any person who takes or rescues any animal impounded as provided in 81-4-307 from the possession of the person in whose custody the same may be, without his consent, shall be guilty of a misdemeanor and upon conviction therefor be subject to a fine of not less than $100 or more than $500 or shall be confined in the county jail not more than 60 days or both such fine and imprisonment.

History: **En. Sec. 6, Ch. 167, L. 1919; re-en. Sec. 3388, R.C.M. 1921; re-en. Sec. 3388, R.C.M. 1935; R.C.M. 1947, 46-1505; amd. Sec. 3, Ch. 488, L. 1979.**

Compiler's Comments

Effective date. Sec. 6, Ch. 488, L. 1979, provided: "This act is effective on passage and approval." Approved April 9, 1979.

81-4-309. Unlawful introduction of livestock into herd district a misdemeanor — penalty. Any person not the owner or person in charge of any livestock who causes any livestock to enter any herd district established under the provisions of 81-4-301 through 81-4-309 is guilty of a misdemeanor and upon conviction thereof is subject to a fine of not less than $250 or more than $500 or confinement in the county jail not less than 60 days or both such fine and imprisonment and is liable for all damages and costs occurring from such trespass. For the purposes of this section, each separate animal so moved constitutes a separate offense.

History: **En. Sec. 7, Ch. 167, L. 1919; re-en. Sec. 3389, R.C.M. 1921; re-en. Sec. 3389, R.C.M. 1935; R.C.M. 1947, 46-1506; amd. Sec. 3, Ch. 14, L. 1979; amd. Sec. 4, Ch. 488, L. 1979.**

Compiler's Comments

Effective date. Sec. 6, Ch. 488, L. 1979, provided: "This act is effective on passage and approval." Approved April 9, 1979.

81-4-310 through 81-4-320 reserved.

81-4-321. Definition. The term "horses" when used in 81-4-321 through 81-4-328 shall include any mare, gelding, stallion, colt, foal, filly, mule, jack, and jenny.

History: En. Sec. 4, Ch. 119, L. 1931; amd. Sec. 2, Ch. 57, L. 1933; re-en. Sec. 3389.5, R.C.M. 1935; R.C.M. 1947, 46-1604(part).

81-4-322. Horse herd districts — size — location — petition — notice and hearing — abolishment. (1) Horse herd districts may be created in any county in the state of Montana upon the petition of owners or possessors of 55% of the land of such district. Such district shall contain 12 square miles or more lying not less than 1 mile in width outside of incorporated cities or towns. Such petition shall designate the months of the year when horse herd district regulations are effective.

(2) Upon presentation and filing of a petition properly signed and reciting the outside boundaries and description of the proposed district, together with the post-office address of the signers thereof, with the clerk and recorder in the county in which the said district is being created, the county commissioners of such county upon receipt thereof shall set a date for hearing protests and verification of signatures thereto and shall give not less than 20 days' notice of the same by three publications in a newspaper of general circulation in the county of the proposed district. Should it appear to such county commissioners, after such hearing, that the signatures attached to such petition were genuine, they shall immediately make an order declaring such horse herd district created and established, after which the county commissioners must give notice by two weekly publications in some newspaper in the county, nearest the district, stating the period when such horse herd district will be in effect and when such district shall not be in effect. Such order shall not be effective until 30 days have expired after the order.

(3) Such herd districts may be abolished at any time upon proceedings as hereinbefore set forth for the establishment of such herd district.

(4) The estimated expense of all publications required by 81-4-321 through 81-4-328 shall be paid by the petitioners, and no part thereof shall be paid by the county.

(5) Upon petition of any owner or possessor of land lying contiguous and adjoining any herd district heretofore created and upon like hearing and notice as hereinabove provided for, such lands shall be included in such herd district and become a part thereof.

(6) Should the signature of a lessee appear on the petition creating or abolishing any herd district, the owner or owners of said land may appear either in person or by agent and enter their protest, and the board of county commissioners shall remove the name of lessee from said petition, and no person shall be permitted to withdraw his name after the hour set for hearing same.

History: En. Sec. 1, Ch. 119, L. 1931; amd. Sec. 1, Ch. 57, L. 1933; re-en. Sec. 3389.2, R.C.M. 1935; R.C.M. 1947, 46-1601.

81-4-323. Petition to dissolve horse herd district — hearing and notice — order of county commissioners. When a petition praying that any established horse herd district be dissolved is filed with the county clerk and recorder of the county wherein such district has been established, and it is set forth therein that such petition is signed by the owners or possessors of 55% or more of the lands lying within such district, the county clerk and recorder shall call such petition to the attention of the board of county commissioners of the county at its next regular meeting. At said meeting by its order the board shall set such petition for hearing at a specified time on a day certain of which notice shall be given by publication at least once in each week, for 3 successive weeks in some newspaper of general circulation in the county. At the time fixed for hearing the board of county commissioners shall first require proof of publication of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties. At the conclusion of any such hearing, if the board of county commissioners shall find that notice of the hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of 55% or more of the lands lying within such herd district have signed the petition and request that such district be dissolved, then the said board shall forthwith spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the said horse herd district is thereby dissolved. Forthwith upon the making and entry of any such order aforesaid the horse herd district affected thereby shall be dissolved for all purposes thereafter.

History: En. Sec. 4A, Ch. 119, L. 1931; re-en. Sec. 3389.6, R.C.M. 1935; R.C.M. 1947, 46-1605.

81-4-324. Horses running at large in herd district prohibited. All horses are hereby prohibited from running at large within any horse herd district as defined in 81-4-322.

History: En. Sec. 2, Ch. 119, L. 1931; re-en. Sec. 3389.3, R.C.M. 1935; R.C.M. 1947, 46-1602.

81-4-325. Penalty and liability for horses wrongfully entering on premises in horse herd district. If any such horse or horses wrongfully enter upon premises within such district of any person, the owner or person in control of such horse or horses shall be punished according to the provisions of 81-4-309 and in addition to said punishment shall be liable for all damages sustained thereby to the party entitled thereto.

History: En. Sec. 3, Ch. 119, L. 1931; re-en. Sec. 3389.4, R.C.M. 1935; R.C.M. 1947, 46-1603.

81-4-326. Retention and sale of horses for damages and care — procedure. (1) The owner or occupant of the land upon which such wrongful entry is made may take into his possession such horse or horses and shall reasonably care for the same while in his possession and may retain possession of said horse or horses and shall have a lien and claim thereon as security for payment of such damages and reasonable charges for the care of said horse or horses while in his possession. The person taking up said horse or horses shall within 48 hours after taking possession thereof notify said owner, owners, or persons in charge thereof by a notice in writing, describing said horse or horses taken up, including marks and brands, if any, the amount of damages claimed, and the charge per head per day for caring for and feeding the same, and describing, either by legal subdivisions or other general description, the location of the premises upon which said horse or horses are held and requiring him within 48 hours after receiving said notice to take the said horse or horses away after making full payment for all damages and costs of said horse or horses. Such notice shall be given by personal service on the said owner, owners, or person in charge thereof or by leaving said notice at his usual place of residence with some member of his family over the age of 14 years or by sending said notice by prepaid registered or certified mail addressed to his last known place of residence. Said service by registered or certified mail shall be deemed complete upon the deposit of the notice in the post office.

(2) Upon demand, the owner or occupant of the land shall release and deliver possession of such horse or horses to the owner or person entitled thereto upon payment of damages and charges, but said payment of damages and charges shall not act as a bar to the prosecution of said person, owner, or person in control of such horse or horses, as hereinbefore provided. If the owner or claimant of such horse or horses is not known to the person taking up such horse or horses or the said owner or claimant shall refuse to pay the amount of damages and charges as herein provided, the said person taking up such horse or horses shall, within 72 hours from the time said horse or horses were so taken up, deliver to the sheriff or a constable of the county in which the horse or horses were so taken up a statement containing the information required to be given in the notice hereinbefore set out, and in addition thereto, he shall mail by prepaid registered or certified mail a copy of said statement addressed to the nearest state livestock inspector. Upon receipt of such statement, the sheriff or constable shall proceed to advertise and sell at public auction the horse or horses so taken up.

History: En. Sec. 4, Ch. 119, L. 1931; amd. Sec. 2, Ch. 57, L. 1933; re-en. Sec. 3389.5, R.C.M. 1935; R.C.M. 1947, 46-1604(1), (2).

81-4-327. Sale of horses — disposition of proceeds. (1) Prior to such sale the sheriff shall have said horses classified as follows:

(a) Class 1 shall include:

(i) horses not bearing a registered brand and which in the opinion of the stock inspector are of a value not to exceed $10 per head; and

(ii) horses bearing a registered brand but which the owner has failed to redeem as herein provided, after notice given, and which in the opinion of the stock inspector are of a value not to exceed $10 per head.

(b) Class 2 shall include horses bearing registered brands and which in the opinion of the stock inspector are of a value in excess of $10 per head.

(2) Horses in class 1 shall be sold on 10 days' notice posted at the courthouse of each county in which any portion of the district lies and posted in three other public places in such county, one of which shall be in that portion of the district included in the county.

(3) Horses in class 2 shall be sold on notice posted for 21 days and otherwise as notices are required to be posted for the sale of horses in class 1, and such notice shall likewise be published once a week for 2 successive weeks before said sale in some newspaper published in the county seat of each county including any part of said district, if there be such newspaper, and if there be no newspaper published in any county comprising a part of such district, then such notice shall be published in any newspaper of general circulation in the county or counties including such district. The notice required

to be published for the sale of horses in class 2 shall describe each horse to be sold, giving the approximate age, description, and brands, if any. The proceeds of the sale shall be applied by the sheriff to the discharge of the claim and the costs of the proceedings in selling the property and enforcing the claim, and the remainder, if any, shall be deposited with the county treasurer who shall keep the same in a special fund to be designated as the "horse herd district fund" (giving number of district if more than one).

(4) A separate fund, styled as above specified, shall be kept by the county treasurer for each of said districts created in his county. The county treasurer shall make a record of the description of each horse, the amount received for same, and the amount of deductions, which record shall be open to public inspection; and any person making claim of ownership of such horse to the board of county commissioners at any time within 1 year from the date of sale and submitting proof of ownership to such board with such claim to the satisfaction of such board shall be entitled to receive such excess received from the sale of such horse. Any money received from the sale of any such horse which shall not be so claimed within 1 year after such sale shall at the expiration of said period be transferred to the general fund of the county.

History: **En. Sec. 4, Ch. 119, L. 1931; amd. Sec. 2, Ch. 57, L. 1933; re-en. Sec. 3389.5, R.C.M. 1935; R.C.M. 1947, 46-1604(part).**

81-4-328. Liability of officers. No officer, board, or employee of any county or any employee of such officer or board shall be liable for any act performed in good faith in discharging official duties under 81-4-321 through 81-4-327, and all such acts shall be presumed to have been in good faith and in conformity with 81-4-321 through 81-4-327.

History: **En. Sec. 5, Ch. 119, L. 1931; re-en. Sec. 3389.7, R.C.M. 1935; R.C.M. 1947, 46-1606.**

Part 4

Impoundment of Livestock in Municipalities

81-4-401. Certain livestock not to run at large in municipalities. It is hereby provided that livestock consisting of horses, cattle, mules, sheep, goats, and swine or any such animals shall not be allowed to run at large in any incorporated city or in any incorporated town.

History: **En. Sec. 1, Ch. 65, L. 1917; re-en. Sec. 3401, R.C.M. 1921; re-en. Sec. 3401, R.C.M. 1935; R.C.M. 1947, 46-1714.**

81-4-402. Punishment for permitting trespass of livestock. Any person owning livestock or having in charge any horses, mules, cattle, sheep, goats, or swine or any such animals, who willfully and unlawfully permits any such livestock to trespass in violation of any of the provisions of 81-4-401, shall be deemed to be guilty of a misdemeanor and upon conviction thereof shall be punished as such as provided by law.

History: **En. Sec. 2, Ch. 65, L. 1917; re-en. Sec. 3402, R.C.M. 1921; re-en. Sec. 3402, R.C.M. 1935; R.C.M. 1947, 46-1715.**

81-4-403. Impounding animals — duties of cities and towns. When any livestock or domestic animals of any kind are impounded, seized, restrained, or held by any city or town or its officers or agents, it shall be the duty of such city or town, its officers or agents, to give notice to the owner of such livestock or domestic animals so impounded, seized, restrained, or held by such city or town, if the owner is known, in the manner hereinafter provided.

History: En. Sec. 1, Ch. 161, L. 1921; re-en. Sec. 5175, R.C.M. 1921; re-en. Sec. 5175, R.C.M. 1935; R.C.M. 1947, 46-2001.

81-4-404. Contents of notice. Said notice shall be in writing and shall give:

(1) the number, description, marks, and brands of such stock when impounded, seized, restrained, or held, with the reasons therefor;

(2) the amount of charges, if any, which shall be reasonable and in no case exceed the actual cost of holding and costs in event of sale; and

(3) what disposition will be made of said stock if such charges are not paid and when and where such disposition shall be made.

History: En. Sec. 2, Ch. 161, L. 1921; re-en. Sec. 5176, R.C.M. 1921; amd. Sec. 1, Ch. 69, L. 1927; re-en. Sec. 5176, R.C.M. 1935; R.C.M. 1947, 46-2002.

81-4-405. Service upon owner. If such owner be known and if his post-office address shall be known as hereinbefore specified, such notice shall be served upon him or her personally.

History: En. Sec. 3, Ch. 161, L. 1921; re-en. Sec. 5177, R.C.M. 1921; re-en. Sec. 5177, R.C.M. 1935; R.C.M. 1947, 46-2003.

81-4-406. Service on department of livestock. If the owner is unknown or if the owner is known but his post-office address is unknown, the notice shall be served on the department of livestock.

History: En. Sec. 4, Ch. 161, L. 1921; re-en. Sec. 5178, R.C.M. 1921; re-en. Sec. 5178, R.C.M. 1935; amd. Sec. 157, Ch. 310, L. 1974; R.C.M. 1947, 46-2004.

81-4-407. Service by mail. Service of such notice may be made personally or by registered or certified mail, postage prepaid, properly addressed, and placed in the United States post office at least 8 days before the day fixed for the disposition of said stock.

History: En. Sec. 5, Ch. 161, L. 1921; re-en. Sec. 5179, R.C.M. 1921; re-en. Sec. 5179, R.C.M. 1935; R.C.M. 1947, 46-2005.

81-4-408. Duty of officers to ascertain brands. It shall be the duty of such city or town and its officers or agents to use reasonable diligence to ascertain any and all marks and brands on such stock, and in case such animals are not branded or marked or the brand or marks are mutilated or undeterminable, such facts shall be noted in said notice.

History: En. Sec. 6, Ch. 161, L. 1921; re-en. Sec. 5180, R.C.M. 1921; re-en. Sec. 5180, R.C.M. 1935; R.C.M. 1947, 46-2006.

81-4-409. Department to ascertain owner — notice. When the notice is served, the department shall ascertain the owner of the stock, if possible, and when the owner is ascertained, immediately furnish the owner with the information contained in the notice. The department shall notify the city or town, its officers or agents, of the name and post-office address of the owner.

History: En. Sec. 7, Ch. 161, L. 1921; re-en. Sec. 5181, R.C.M. 1921; re-en. Sec. 5181, R.C.M. 1935; amd. Sec. 158, Ch. 310, L. 1974; R.C.M. 1947, 46-2007.

81-4-410. Provisions mandatory. The provisions hereof are mandatory, and the owner of such livestock will not lose title or right of possession to his stock unless the provisions hereof are strictly complied with.

History: En. Sec. 8, Ch. 161, L. 1921; re-en. Sec. 5182, R.C.M. 1921; re-en. Sec. 5182, R.C.M. 1935; R.C.M. 1947, 46-2008.

Part 5

Roundup of Abandoned Horses

81-4-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned horse" means a horse, mare, gelding, filly, jack, mule, or other animal of the genus equus, 1 year of age or over and unbranded or, if branded, which has escaped assessment for taxation for the year immediately preceding its impounding as provided for in this part, and running at large on the open range of this state, including foals running with dams coming within the above definition. An animal not bearing a decipherable brand which is recorded with the department of livestock is considered unbranded.

(2) "Open range" means all lands in this state not enclosed by a fence. The term "open range" includes all highways outside of private enclosures and used by the public, whether the highways have been formally dedicated to the public or not.

(3) "Person" includes individuals, associations, persons, and corporations.

History: En. Sec. 1, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.1, R.C.M. 1935; amd. Sec. 148, Ch. 310, L. 1974; R.C.M. 1947, 46-1801.

81-4-502. Abandoned horses on public range declared public nuisance subject to condemnation — right of owner. It is unlawful for any person owning or having control of any horse to abandon the horse upon the open range in the state of Montana, and such horses so running at large upon the open range in the state are a public nuisance and a public menace and are condemned, subject to the right of the owner of any such abandoned horse to reclaim the same under the conditions hereinafter provided.

History: En. Sec. 2, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.2, R.C.M. 1935; amd. Sec. 54, Ch. 12, L. 1977; R.C.M. 1947, 46-1802.

81-4-503. Roundup of abandoned horses — petition — expenses. (1) For the purpose of speedily clearing abandoned horses from the open range in any county or in any district thereof, the board of county commissioners of any such county must, upon the petition of at least five responsible property owners, inhabitants of the proposed roundup district engaged in the livestock business and paying taxes upon livestock in such county, or upon the petition of a reputable local livestock association, authorize a roundup of abandoned horses in any district within such county.

(2) Upon the filing of such petition, the board shall make an order authorizing such roundup, which order shall describe generally such district with reasonable certainty. Said district shall not include more or less territory than that described in the petition. Such order shall also specify the

date on or within 10 days after which the roundup shall begin and shall designate the place within the district at which the headquarters of such roundup shall be maintained.

(3) Any such roundup shall be conducted in such manner as to cause as little disturbance as reasonably possible to horses running lawfully on the open range.

(4) All expense of any such roundup shall be paid by the petitioners at whose request the same is initiated, and no county officer or board shall have any power to expend any moneys of the county or incur any obligation on its behalf in connection with any such roundup. Such petitioners, however, shall be reimbursed for the expense of such roundup, as and when moneys may be available for that purpose in the abandoned horse fund, by warrants issued upon claims filed as in the case of other claims against the county.

History: En. Sec. 3, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.3, R.C.M. 1935; R.C.M. 1947, 46-1803.

81-4-504. Notice of holding roundup — publication — form. Notice of the roundup shall be given by the board of county commissioners at least 30 days before the date when the roundup begins. The notices shall be published at least once a week for 3 successive weeks in some newspaper of general circulation, printed and published in the county in which the roundup is to be held, if a newspaper of this type is printed and published in the county. The notice shall be posted in at least five public places outside of the county seat of the county on public highways in the county or district, as the case may be, in which the roundup is to be held. Three notices shall be posted in three public places in the county seat. One of the notices shall be posted at the front door of the courthouse. The notices posted outside of the county seat are to be posted not less than 2 miles apart, and all posted notices are to be posted at least 20 days before the date on which the roundup begins as stated in the notice. If no newspaper is printed and published in the county, publication in a newspaper is not required. At least 20 days before the date on which the roundup is to begin, a copy of the notice shall be filed with the department by the clerk of the board of county commissioners.

History: En. Sec. 4, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.4, R.C.M. 1935; amd. Sec. 149, Ch. 310, L. 1974; R.C.M. 1947, 46-1804.

81-4-505. Roundup foreman — duties — bond. (1) All roundups shall be under the control and supervision of the board of county commissioners of the county in which the same shall be held. Roundup districts shall be numbered in the order of their creation. Each roundup shall be conducted by some person designated by the board of county commissioners, whose official designation shall be "roundup foreman, ... roundup district, ... County, state of Montana".

(2) Such person shall maintain his headquarters at the place designated by the board of county commissioners in its order as the headquarters of such roundup. Such roundup foreman shall have power to administer oaths and affirmations in all matters coming within the scope of his official duties.

(3) The board of county commissioners shall require from such roundup foreman an official bond, in an amount not less than $2,500 and not to

exceed $5,000, which bond shall be conditioned as official bonds of county officers and shall be subject to all provisions of law applicable to such bonds.

History: En. Sec. 5, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.5, R.C.M. 1935; R.C.M. 1947, 46-1805(part).

81-4-506. Sale of abandoned horses. All abandoned horses taken up in any such roundup shall be delivered to the roundup foreman in charge of such roundup and shall be by him offered for sale at public auction and sold to the highest bidder for cash, if there be any bidder or bidders therefor, and any such abandoned horses so offered for sale and for which no bid is made shall be destroyed or otherwise disposed of in the discretion of the board of county commissioners, unless reclaimed as herein provided.

History: En. Sec. 5, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.5, R.C.M. 1935; R.C.M. 1947, 46-1805(part).

81-4-507. Gathering horses in roundup district before roundup unlawful — rights of owner. It shall be unlawful for any person or persons to round up from the range any horse or horses in any roundup district after such districts have been designated by the county commissioners until after such roundup. However, an owner of horses on which the taxes have been paid in this district may gather the same by notifying the roundup foreman and being accompanied by such foreman or a representative of such foreman in gathering such horses.

History: En. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.16, R.C.M. 1935; R.C.M. 1947, 46-1815.

81-4-508. Claim of owner — cost of keeping and feeding horses. Any person claiming to be the owner of any such abandoned horse or horses may serve written notice upon the roundup foreman in charge of such roundup of his claim of ownership, at any time before sale or other final disposition of such horse or horses. Such claim of ownership shall be verified by the oath of the claimant or someone on his behalf, and the sale or other final disposition of such horse or horses shall, as to such horse or horses, be postponed from time to time as may be necessary to enable the claimant to make proof of his claim as herein provided. Such postponement shall not be had unless the claimant shall pay to the roundup foreman in charge of such roundup or deliver to him satisfactory security for the estimated cost of keeping and feeding such horse or horses until sale or other final disposition or delivery to the owner.

History: En. Sec. 6, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.6, R.C.M. 1935; R.C.M. 1947, 46-1806.

81-4-509. Proof of ownership — payment of taxes and penalties — decision of commissioners on claim. Any person claiming any abandoned horse or horses as provided in 81-4-508 shall, within 5 days after serving the notice provided for in 81-4-508, or within such further time as the board of county commissioners shall allow, upon good cause shown, submit to such board proof of his ownership and shall deposit with said board the amount of any unpaid taxes and penalties which may be assessed against such horse or horses, together with the sum of $5 roundup fee. The board shall decide all such cases in preference to all other matters coming before it and at the earliest possible moment. If the claim shall be allowed, the roundup foreman in charge of such roundup shall immediately be notified of such decision and he shall forthwith deliver such horse or horses as to which ownership shall be so proved to the owner upon payment of any amount due from such owner for the estimated cost of keeping and feeding such horse or horses as aforesaid. The deposit made by such owner of taxes, penalties, and roundup fee shall be delivered by the board to the county treasurer. If such board shall deny the claim of ownership, it shall forthwith notify the person in charge of such roundup of its decision and such horse or horses as to which such claim shall be denied shall be offered for sale at the earliest convenient session of the sales being held under such roundup, and if not sold, the same shall be destroyed or otherwise disposed of as though no claim had been presented.

History: En. Sec. 7, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.7, R.C.M. 1935; R.C.M. 1947, 46-1807.

81-4-510. Notice of sale of abandoned horses — form — time of sale — title. (1) Before any sale shall be had, at least 10 days' notice shall be given by publication and posting in the manner specified in 81-4-504, except that publication, if made in a newspaper, shall be once in each week for two successive weeks, and posting shall be done at least 5 days before the date of sale. Such notice shall be in substantially the following form:

NOTICE OF SALE OF ABANDONED HORSES

Notice is hereby given that on .... day, the .... day of ...., 19.., at .... in the county of ...., state of Montana, beginning at the hours of ....m., on said day the following described abandoned horses will be sold at public auction to the highest bidder for cash, to wit:

(Give general description of horses to be sold by brand, if any, color, approximate weight, and estimated age.)

Any horses not reclaimed before sale as provided by law and for which no bid is made at said sale will be destroyed or otherwise disposed of in the discretion of the board of county commissioners of .... County, state of Montana.

Dated the .... day of ...., 19...

By order of the board of county commissioners of .... County, Montana.

By ...., clerk of said board.

(2) All such sales shall be held between the hours of 8 a.m. and 6 p.m. and may be continued from time to time until all abandoned horses taken in such roundup shall have been disposed of. On payment of the price bid for any such horse or horses sold, the delivery thereof, with a bill of sale, vests the title thereto in the purchaser.

History: En. Sec. 8, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.8, R.C.M. 1935; R.C.M. 1947, 46-1808.

81-4-511. Assessment of horses taken in roundup. It shall be the duty of the county assessor immediately to assess all horses taken up in such roundup which shall be sold or reclaimed before sale and not already assessed for the current year and forthwith transmit to the county treasurer a copy of each assessment made. Any such horses which have escaped the assessment mentioned in 81-4-501 shall be assessed as provided for in 15-8-306.

History: En. Sec. 9, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.9, R.C.M 1935; R.C.M. 1947, 46-1809.

81-4-512. Disposition of proceeds — abandoned horse fund — use of fund. All moneys paid by reclaiming owners of any such horse or horses shall be paid to the county treasurer and by him kept in a fund to be designated as the "abandoned horse fund, roundup district No. .... (giving number of district in which such horse or horses were rounded up)". A separate fund, styled as above specified, shall be kept by the county treasurer for each roundup district created in his county. All moneys received from the sale of any such horses shall be paid to the county treasurer, and if such sum received from the sale of any such horse shall not exceed the taxes, penalties, and the roundup fee, the whole thereof shall be immediately deposited in the abandoned horse fund for the district in which such horse or horses were rounded up. But if the sum received from the sale of any such horse shall exceed such taxes, penalties, and roundup fee, the amount of such taxes, penalties, and roundup fee shall be forthwith deposited in the abandoned horse fund for such district and the excess shall be kept by the treasurer in a separate fund, and he shall make a record of the description of such horse, the amount received for the same, and the amount of deductions for taxes, penalties, and roundup fee, which record shall be open to public inspection. Any person making claim to the board of county commissioners, at any time within 6 months from the date of sale, of ownership of such horse and submitting proof of ownership to such board with such claim, to the satisfaction of such board, shall be entitled to receive such excess received from the sale of such horse. Any money received from the sale of any such horse in excess of taxes, penalties, and roundup fee, which shall not be so claimed within 6 months after such sale, shall at the expiration of said period become the property of such county and shall be transferred to the abandoned horse fund for the district in which any such horse was rounded up.

History: En. Sec. 10, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.10, R.C.M. 1935; R.C.M. 1947, 46-1810.

81-4-513. Report of roundup foreman — disposition of copies. The roundup foreman in charge of any such roundup shall keep an accurate record of all proceedings had under the order for such roundup, and within 30 days after such roundup shall be completed, he must prepare in triplicate and verify by his oath a full, true, and accurate report of all the proceedings taken or had under the order for the roundup, among other things, particularly including a complete financial statement, the number and description of horses impounded and how disposed of. Within said 30 days one of such triplicates of such report shall be filed with the clerk of the board of county commissioners, and such filing shall be notice to the world of all the contents of such report and prima facie proof of the facts therein stated. Within said 30 days one of such triplicate shall also be filed with the county assessor and one with the county treasurer for their information and appropriate action.

History: En. Sec. 11, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.11, R.C.M. 1935; R.C.M. 1947, 46-1811.

81-4-514. Transfer of moneys of abandoned horse fund to general fund. On November 30 of each year, the county treasurer shall, if all claims against any such abandoned horse fund are paid and a balance remains in such fund, transfer all moneys so remaining in such fund to the general fund of the county, subject to the usual division with the state as to any portion of such balance which shall consist of taxes collected on the abandoned horses. No part of the roundup fee of $5 shall be paid to the state. Any portion of the taxes so collected which shall be used in paying claims against said fund is hereby declared to be a part of the cost of collection of such taxes.

History: En. Sec. 12, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.12, R.C.M. 1935; R.C.M. 1947, 46-1812.

81-4-515. Liability of officers and employees. No officer, board, or employee of any county or any employee of any such officer or board shall be liable for any act performed in good faith in discharging official duties under this part. All such acts shall be presumed to have been in good faith and in conformity with this part.

History: En. Sec. 13, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.13, R.C.M. 1935; R.C.M. 1947, 46-1813.

81-4-516. Limitation of powers or duties of officers. Except as herein provided, nothing herein contained shall be construed as limiting the powers or duties of assessors, county treasurers, or other boards or officers.

History: En. Sec. 14, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.13, R.C.M. 1935; R.C.M. 1947, 46-1814.

Part 6

Estrays

81-4-601. Estray defined. In this part, "estray" means a horse, mule, mare, gelding, colt, cow, ox, bull, stag, steer, heifer, calf, sheep, or lamb:

(1) not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district in which the animal is found by inquiry among reputable resident stock owners or freeholders;

(2) bearing a recorded brand, the owner of which brand cannot be located at or through the post office designated on the records of the department or which owner cannot be located by the stock inspector of the district where the estray is found by inquiry among reputable resident stock owners or freeholders; or

(3) which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district in which the animal is found by inquiry among reputable resident stock owners or freeholders.

History: En. Sec. 5, Ch. 34, L. 1915; re-en. Sec. 3337, R.C.M. 1921; re-en. Sec. 3337, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1959; amd. Sec. 1, Ch. 37, L. 1963; amd. Sec. 137, Ch. 310, L. 1974; R.C.M. 1947, 46-1005.

81-4-602. Estrays — department authorized to take possession. The department and its appointed stock inspectors may take possession of estrays found running at large in this state and may dispose of the estrays, subject to the following restrictions.

History: En. Sec. 1, Ch. 34, L. 1915; re-en. Sec. 3333, R.C.M. 1921; re-en. Sec. 3333, R.C.M. 1935; amd. Sec. 133, Ch. 310, L. 1974; R.C.M. 1947, 46-1001.

81-4-603. Taking up and disposition of estrays — advertisement. (1) A stock inspector authorized by the department shall take into his possession an estray found in his district and shall either ship or arrange for the shipment of the estray to a licensed livestock market for sale, or he may hold the estray in his possession and care for the estray in the cheapest and most practicable manner for a period of not less than 30 days or more than 60 days, during which time he shall advertise that he holds the estray and that, unless claimed by the owner, he will on a date to be specified in the notice sell the estray at a public auction to the highest bidder for cash.

(2) The notice shall be published in the newspaper doing the county printing of the county in which the estray is found and in addition to that paper in a paper published in the town or city nearest the place in which the estray is held. This notice shall be published at least once a week for 4 consecutive weeks and shall contain a statement of the date of the sale, the place where the sale is to be held, and a general description of the estray, including the sex and the approximate age, together with an illustration of the brand and the position of the brand on the estray and a description of the place or locality where the estray was found or taken.

(3) The proceeds from the sale shall be disposed of under 81-4-605 and 81-4-606.

(4) The owner of the estray may appear and claim it at any time before the sale or shipment, as provided in this part, without cost or expense to the owner.

History: En. Sec. 2, Ch. 34, L. 1915; re-en. Sec. 3334, R.C.M. 1921; re-en. Sec. 3334, R.C.M. 1935; amd. Sec. 1, Ch. 34, L. 1943; amd. Sec. 134, Ch. 310, L. 1974; R.C.M. 1947, 46-1002.

81-4-604. Sale at public auction — branding. On the date specified in the notice provided for in 81-4-603, the stock inspector shall sell the estray at a public auction to the highest bidder for cash. Before removal from the sale, the stock inspector shall brand the estray with the recorded estray brand of the department.

History: En. Sec. 3, Ch. 34, L. 1915; re-en. Sec. 3335, R.C.M. 1921; re-en. Sec. 3335, R.C.M. 1935; amd. Sec. 135, Ch. 310, L. 1974; R.C.M. 1947, 46-1003.

81-4-605. Expenses, how paid — disposition of proceeds of sale. Expenses for collecting, holding, advertising, and selling of the estray shall be paid out of the gross proceeds of the sale of the estray, and the balance of the proceeds of the sale shall be forwarded to the department to be advertised as estray funds in the manner provided by law. The proceeds are subject to claim by the owner of the animal for a period of 2 years from the date of the sale. If the owner of the estray claims the animal before the sale of the animal, the expense incurred by the stock inspector to that time shall be paid by the owner.

History: En. Sec. 4, Ch. 34, L. 1915; re-en. Sec. 3336, R.C.M. 1921; re-en. Sec. 3336, R.C.M. 1935; amd. Sec. 136, Ch. 310, L. 1974; R.C.M. 1947, 46-1004; amd. Sec. 1, Ch. 34, L. 1979.

81-4-606. Publication of description of estrays sold — disposition of proceeds remaining in state treasury. A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two consecutive weekly, semimonthly, or monthly issues after May 1 of each year in not more than four weekly, semimonthly, or monthly publications in this state.

The publications shall be designated by the department, and when the publication has been made and the proceeds from the sale of the estrays has remained in the hands of the state treasurer for a period of 2 years, it shall be, by the treasurer, upon request of the department, immediately placed to the credit of the earmarked revenue fund for the use of the department.

History: En. Sec. 5, Ch. 2, L. 1911; amd. Sec. 1, Ch. 20, L. 1919; re-en. Sec. 3338, R.C.M. 1921; amd. Sec. 1, Ch. 63, L. 1927; re-en. Sec. 3338, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1941; amd. Sec. 107, Ch. 147, L. 1963; amd. Sec. 138, Ch. 310, L. 1974; R.C.M. 1947, 46-1006.

81-4-607. Shipment of stray cattle — duty of shipper and railroad agents — petition for inspection. (1) A person, agent, firm, corporation, pool, or roundup association which ships cattle by railroad to a market where Montana livestock inspectors are maintained may ship with their own cattle estrays which are among them. They must before shipment or at the time of loading the cattle on the cars for shipment carefully and as accurately as possible inspect or tally the brand on the cattle, whether their own or estrays, making a list in duplicate. The list shall state the date of loading, name of shipper, description of brands on each animal, number and class of the cattle bearing the brand, destination, name of the commission firm to whom consigned, and the name of the person in charge of the shipment; and in the case of cattle not owned by the shipper which are marked with a recorded brand or where the owner is known to be someone other than the shipper, the shipper must obtain the written consent of the owner or the written consent of a state stock inspector or a deputy state stock inspector before shipment of the cattle.

(2) The railroad agent at the point of loading shall require from the shipper the lists described in this section and shall forward, within 24 hours after loading, one copy to the department and another copy to the Montana brand inspector at the point of destination.

(3) In a county where there has been established an association of livestock people, the department, on the receipt of a petition from an association, shall require that all cattle shipped by rail from the county be inspected by a state stock inspector or deputy state stock inspector before the cattle are loaded. The petition must be signed by at least 51% of the owners of cattle in the county, and these petitioners must own at least 55% of the cattle as shown by the most recent completed assessment records of the county assessor.

History: En. Sec. 1, Ch. 94, L. 1907; Sec. 1820, Rev. C. 1907; re-en. Sec. 3341, R.C.M. 1921; amd. Sec. 1, Ch. 29, L. 1923; re-en. Sec. 3341, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1943; amd. Sec. 1, Ch. 99, L. 1957; amd. Sec. 139, Ch. 310, L. 1974; R.C.M. 1947, 46-1008.

81-4-608. Description of animals taken out during shipment. Every person in charge of or who accompanies such shipment as the shipper in charge shall take an accurate description, including the brands, of each and every animal, whether dead or alive, taken out of shipment in transit between original loading point and final destination and shall hand such description to the state stock inspector at such point of destination immediately upon arrival of the shipment in the stockyards.

History: En. Sec. 2, Ch. 94, L. 1907; Sec. 1821, Rev. C. 1907; re-en. Sec. 3342, R.C.M. 1921; re-en. Sec. 3342, R.C.M. 1935; R.C.M. 1947, 46-1010.

81-4-609. Powers and duties of inspectors outside of state. (1) The stock inspector appointed to inspect Montana cattle at a cattle market outside this state shall be commissioned by the department and may inspect cattle that come from this state to the market where he is located. He has the same power as stock inspectors in this state to inspect, seize, and sell stock which he has reason to believe is stolen or on which brands have been altered or obliterated. He may take the proceeds of an animal in dispute or bearing altered or burned brands, remitting the proceeds to the department, which shall hold the proceeds pending a decision on ownership.

(2) The stock inspector shall, on receipt of the certified lists mentioned in 81-4-607 and 81-4-608, make an inspection of the cattle listed, and if, on comparison of the list with his own inspection, he finds a difference or discrepancy, he shall make a second inspection of any animal for which the two tallies do not agree, clipping the animal when necessary to determine, accurately and definitely, which inspection or tally is correct. He shall immediately make an inspection report to the department, stating in detail where the discrepancies with the loading tally exist and calling special attention to his own inspection of the animal. He shall, in his own report, make mention of any animal, with the brands on the animal, which was taken out by the shipper in charge of the stock while in transit between the original loading point and point of final destination. These reports shall be entered in a suitably bound book and are at all times open to public inspection.

History: En. Sec. 3, Ch. 94, L. 1907; Sec. 1822, Rev. C. 1907; re-en. Sec. 3343, R.C.M. 1921; re-en. Sec. 3343, R.C.M. 1935; amd. Sec. 140, Ch. 310, L. 1974; amd. Sec. 44, Ch. 12, L. 1977; R.C.M. 1947, 46-1011.

81-4-610. Department to furnish blanks. The department shall have printed the necessary blanks for the tallying of cattle at loading points under 81-4-607, and it shall furnish the blanks free to shippers on application. The expense of the printing shall be paid by the department.

History: En. Sec. 4, Ch. 94, L. 1907; Sec. 1823, Rev. C. 1907; re-en. Sec. 3344, R.C.M. 1921; re-en. Sec. 3344, R.C.M. 1935; amd. Sec. 141, Ch. 310, L. 1974; R.C.M. 1947, 46-1012.

81-4-611 through 81-4-620 reserved.

81-4-621. Penalties. (1) Any person who shall, for his own use or benefit and without the owner's consent, take into his possession any estray shall be guilty of a misdemeanor and shall be punishable by a fine of not less than $25 or more than $100 or by imprisonment in the county jail not exceeding 60 days or by both such fine and imprisonment.

(2) Every person, agent, firm, or corporation violating the provisions of 81-4-607 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $300 or imprisoned in the county jail not to exceed 6 months or both fined and imprisoned.

(3) Any person, agent, firm, corporation, pool, or roundup association who shall ship cattle from this state and shall fail to make such inspection or tally at point of loading or who shall fail to file a true and correct tally, to the best of his knowledge and belief, of all the brands of cattle in such shipment with the railroad agent at the point of shipment or who shall fail to forward a true and correct copy, duly signed by him as party making the shipment,

to the stock inspector at point of destination or any person who shall accompany a shipment of cattle as the shipper in charge from this state and shall fail to take a description of any and every animal taken out in transit and hand such description to the stock inspector at point of destination or any stock inspector at market points who shall fail to make inspection as provided in 81-4-609 shall be deemed guilty of a misdemeanor and shall be subject to a fine of not less than $50 or more than $500 for each and every offense. The fines so collected shall be turned into the general fund of the county where conviction is had, and any stock inspector, sheriff, or other police officer shall have power to make arrests to enforce the provisions of this part.

History: (1)En. Sec. 2, Ch. 169, L. 1921; re-en. Sec. 3340, R.C.M. 1921; re-en. Sec. 3340, R.C.M. 1935; Sec. 46-1007, R.C.M. 1947; (2)En. Sec. 2, Ch. 29, L. 1923; re-en. Sec. 3341.1, R.C.M. 1935; Sec. 46-1009, R.C.M. 1947; (3)En. Sec. 5, Ch. 94, L. 1907; Sec. 1824, Rev. C. 1907; re-en. Sec. 3345, R.C.M. 1921; re-en. Sec. 3345, R.C.M. 1935; Sec. 46-1013, R.C.M. 1947; R.C.M. 1947, 46-1007, 46-1009, 46-1013.

CHAPTER 5

UNLAWFUL TRANSPORTING OR DRIVING OF LIVESTOCK

Part 1 — Unlawful Driving of Animals

Section
81-5-101. Driving cattle from customary range forbidden.
81-5-102. Driving animals upon railroad track.
81-5-103. Abandonment of sheep — penalty.
81-5-104. Stolen livestock — seizure and confiscating of vehicle used to transport.
81-5-105. Stolen livestock — seizure and confiscating of vehicle used to transport — service of process.
81-5-106. Sale at public auction.
81-5-107. Disposition of proceeds.

Part 2 — Transportation of Sheep

81-5-201. Order requiring sheep removal permits — petition by sheep raisers.
81-5-202. Form and issuance of permits — fee.
81-5-203. Publication of notice of sheep removal permit order.
81-5-204. Removal of permit requirement.

Part 1

Unlawful Driving of Animals

81-5-101. Driving cattle from customary range forbidden. Every person who willfully drives or causes to be driven any cattle, horses, mules, or sheep from their customary range without the permission of the owner thereof is punishable by imprisonment in the county jail not exceeding 90 days or by fine not exceeding $100, or both.

History: En. Sec. 1, Ch. 60, L. 1919; re-en. Sec. 11549, R.C.M. 1921; re-en. Sec. 11549, R.C.M. 1935; Sec. 94-3568, R.C.M. 1947; redes. 46-3002 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-3002.

81-5-102. Driving animals upon railroad track. If a person willfully drives an animal upon a railroad track with intent to injure the corporation or persons owning the railroad and such animal is killed or injured thereby, the person is punishable by imprisonment in the state prison not exceeding 5 years and is liable for all injury or damage occasioned by reason of such act.

History: (1)En. Sec. 1191, Pen. C. 1895; re-en. Sec. 8865, Rev. C. 1907; re-en. Sec. 11555, R.C.M. 1921; re-en. Sec. 11555, R.C.M. 1935; redes. 46-3003 by Sec. 29, Ch. 513, L. 1973; Sec. 46-3003, R.C.M. 1947; (2)En. Sec. 724, 5th Div. Comp. Stat. 1887; amd. Sec. 957, Civ. C. 1895; re-en. Sec. 4316, Rev. C. 1907; re-en. Sec. 6547, R.C.M. 1921; re-en. Sec. 6547, R.C.M. 1935; Sec. 72-408, R.C.M. 1947; R.C.M. 1947, 46-3003, 72-408; amd. Sec. 4, Ch. 14, L. 1979.

81-5-103. Abandonment of sheep — penalty. Every person who, having, by virtue of his employment as herder, driver, or otherwise, the charge or custody of any sheep, shall willfully abandon the same or allow them to stray from his charge or custody shall, upon conviction, be punished by a fine of not less than $100 or by imprisonment of not less than 3 months or more than 1 year, or by both such fine and imprisonment; provided, that if the person so in the charge or custody of such sheep shall have given to the owner of such sheep, or his authorized agent, at least 5 days' notice of his intention to quit his employment, he shall not be deemed to have abandoned such sheep, within the meaning of this section, by leaving the same after the expiration of such period.

History: En. Sec. 1, Ch. 116, L. 1909; re-en. Sec. 11550, R.C.M. 1921; re-en. Sec. 11550, R.C.M. 1935; Sec. 94-35-200, R.C.M. 1947; redes. 46-3004 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-3004.

81-5-104. Stolen livestock — seizure and confiscating of vehicle used to transport. (1) The use of any vehicle for the transportation of any stolen mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, hogs, poultry, or the products of any thereof shall be unlawful, and such vehicle shall be forfeited to and confiscated by the state. Any such vehicle found in such use or upon probable cause believed to be devoted wholly or in part to such use shall be seized and held and, upon conviction in a proceeding in the name of the state of Montana against such vehicle or against such vehicle and the owner before any district court or judge thereof, shall be confiscated and sold.

(2) Such vehicle shall not be confiscated or subject to forfeiture if the same be a stolen vehicle at the time it is used for such unlawful transportation and the owner thereof is not in collusion with the party or parties guilty of the theft.

History: En. Sec. 1, Ch. 80, L. 1931; re-en. Sec. 11552.1, R.C.M. 1935; amd. Sec. 1, Ch. 132, L. 1963; Sec. 94-35-204, R.C.M. 1947; redes. 46-3005 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-3005.

81-5-105. Stolen livestock — seizure and confiscating of vehicle used to transport — service of process. Service of process in a proceeding for confiscation of such vehicle shall conform as far as practicable with the provisions of the Montana Rules of Civil Procedure, provided that insofar as the proceeding against the vehicle is concerned no copy of the summons or complaint need be mailed and the service shall be complete upon publication.

History: En. Sec. 3, Ch. 80, L. 1931; re-en. Sec. 11552.3, R.C.M. 1935; Sec. 94-35-206, R.C.M. 1947; redes. 46-3007 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 57, Ch. 12, L. 1977; R.C.M. 1947, 46-3007.

81-5-106. Sale at public auction. Such sale shall be at public auction and otherwise in the manner of sales of personal property under execution and may be made by any sheriff, livestock inspector, or other peace officer.

History: En. Sec. 4, Ch. 80, L. 1931; re-en. Sec. 11552.4, R.C.M. 1935; Sec. 94-35-207, R.C.M. 1947; redes. 46-3008 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-3008.

81-5-107. Disposition of proceeds. The officer making the sale, after deducting the expenses of keeping the property and the cost of the sale so far as the balance of sale proceeds permit, shall pay all liens, according to their priorities, which are established, by intervention or otherwise in the proceedings, as being bona fide and as having been created without the lienor having any notice or reasonable cause to believe that the vehicle was being or was to be used for the illegal transportation and shall pay the balance of the proceeds to the treasurer of this state to be credited to the department of livestock fund.

History: En. Sec. 2, Ch. 80, L. 1931; re-en. Sec. 11552.2, R.C.M. 1935; Sec. 94-35-205, R.C.M. 1947; redes. 46-3006 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 200, Ch. 310, L. 1974; R.C.M. 1947, 46-3006.

Part 2

Transportation of Sheep

81-5-201. Order requiring sheep removal permits — petition by sheep raisers. (1) The department shall, within 60 days of the filing of a petition signed by not less than 51% of the sheep raisers owning not less than 51% of the sheep in a county of this state requesting such action, make an order requiring a permit for the removal of any sheep from the county.

(2) Effective on the date of the department's order which requires a permit for the removal of sheep from a county, it is unlawful for a person to remove sheep from the county without a permit. A person who removes, authorizes, or assists in the removal of sheep from the county without a permit is guilty of a misdemeanor.

History: (1)En. Sec. 1, Ch. 135, L. 1963; amd. Sec. 110, Ch. 310, L. 1974; Sec. 46-809, R.C.M. 1947; (2)En. Sec. 2, Ch. 135, L. 1963; amd. Sec. 111, Ch. 310, L. 1974; Sec. 46-810, R.C.M. 1947; R.C.M. 1947, 46-809, 46-810.

81-5-202. Form and issuance of permits — fee. Before making an order under this part, the department must provide for the form of the permit and for issuance of the permits by livestock inspectors in the affected county. Fee for issuance of the permit is 50 cents.

History: En. Sec. 3, Ch. 135, L. 1963; amd. Sec. 112, Ch. 310, L. 1974; R.C.M. 1947, 46-811.

81-5-203. Publication of notice of sheep removal permit order. Before the effective date of an order made under this part, the department must publish a notice containing the text and effective date of the order at least three times in a paper of general circulation in the county and must have a copy of the order mailed to every sheep raiser in the county.

History: **En. Sec. 4, Ch. 135, L. 1963; amd. Sec. 113, Ch. 310, L. 1974; R.C.M. 1947, 46-812.**

81-5-204. Removal of permit requirement. On receipt of a petition signed in the manner specified in 81-5-201 requesting the removal of the permit requirement, the department shall, at its next meeting, order the permit requirement removed.

History: **En. Sec. 5, Ch. 135, L. 1963; amd. Sec. 114, Ch. 310, L. 1974; R.C.M. 1947, 46-813.**

CHAPTER 6

LIVESTOCK PROTECTIVE ASSOCIATIONS

Part 1 — Livestock Protective Committees

Section

81-6-101. Petition for county livestock protective committee — members — term.
81-6-102. Organization of committee — officers — meetings.
81-6-103. Powers and duties of committee.
81-6-104. Tax levy — special fund.
81-6-105. Special livestock deputy — duties — compensation.
81-6-106. Discontinuing county livestock protective committee.
81-6-107. Cooperation with committee by adjoining county.
81-6-108. County participation in defraying part of administrative expenses.

Part 2 — Cattle Protective Districts

81-6-201. Formation of districts in two or more counties authorized — petition of cattle owners — declaration by county commissioners.
81-6-202. Selection of cattle protective committee members.
81-6-203. Powers and duties of protective committees.
81-6-204. Tax levy — deposit of proceeds.
81-6-205. Removal of area from protective district — discontinuance of district — levy saved.
81-6-206. Formation of county district authorized — petition of cattle owners — declaration by county commissioners.
81-6-207. Selection of cattle protective committee members.
81-6-208. Powers and duties of protective committees.
81-6-209. Tax levy — deposit of proceeds.
81-6-210. Discontinuance of district — levy saved.

Part 1

Livestock Protective Committees

81-6-101. Petition for county livestock protective committee — members — term. (1) The board of county commissioners must, upon receipt of a petition or petitions to do so, signed by at least 51% of the owners of cattle in the county and such petitioners owning at least 55% of the cattle as shown by the most recent completed assessment records of the county assessor, set up a county livestock protective committee of three members.

(2) Members appointed to serve on such committee shall be residents of the county engaged in the business of raising cattle. If there be in the county

any organization of cattle growers, the county commissioners shall give preference to names submitted by any such group for appointment to such committee. The term for which said committee members shall be appointed shall be 2 years with two members of the first committee named to serve for 2 years, one member to serve for 1 year. Members of such committee shall receive no remuneration or reimbursement for expenses for serving on said committee.

(3) By "organization of cattle growers", as used in this section, is meant any group or organization holding regular meetings at least annually, having officers, and composed predominantly of cattle growers resident in the county, with its membership open to cattle growers willing to abide by its governing rules or bylaws, and its general purpose being the promotion of the interests of its members in matters pertaining to the cattle or livestock industry.

(4) If owners of sheep in the county desire to come under the provisions of this part in cooperation with owners of cattle, they shall file a like petition to that set out herein for owners of cattle, and in such case at least one member of said livestock protective committee shall be a sheep grower and where the word "cattle" appears in this part, it shall be deemed to comprehend also the word "sheep".

(5) Owners of sheep alone may form a county livestock protective committee, in which case the word "cattle" as in this part contained shall be considered as if it were the word "sheep"; and provided further that the levy as provided in 81-6-104 hereof shall, in the case of sheep, not exceed 5 cents per head.

History: **En. Sec. 1, Ch. 168, L. 1953; R.C.M. 1947, 46-2701.**

81-6-102. Organization of committee — officers — meetings. Said county livestock protective committee shall upon appointment and annually thereafter organize by election of a chairman and a secretary. Meetings of the committee shall be held at the call of the chairman or any two members of the committee. Minutes of all meetings of the committee shall be kept by the secretary. Such minutes shall be presented at the ensuing meeting of the committee and upon approval thereof shall be signed by the chairman and secretary and immediately thereafter deposited with the county clerk and recorder and kept available for public inspection.

History: **En. Sec. 2, Ch. 168, L. 1953; R.C.M. 1947, 46-2702.**

81-6-103. Powers and duties of committee. The county livestock protective committee shall advise, assist, and cooperate with the department of livestock, the board of county commissioners, the sheriff, and all other public officials or police officers who have duties pertaining to hide and brand inspection, apprehension of livestock rustlers, the prevention of rustling, enforcement of laws governing the movement and sale of livestock, the treatment and prevention of livestock diseases, and other matters which are of interest and value to the livestock industry in the county.

History: **En. Sec. 3, Ch. 168, L. 1953; amd. Sec. 180, Ch. 310, L. 1974; R.C.M. 1947, 46-2703.**

81-6-104. Tax levy — special fund. Said county livestock protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed 50 cents per head on all assessable cattle in the county on January 1, and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property and when collected to be deposited by the county treasurer in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.

History: **En. Sec. 4, Ch. 168, L. 1953; amd. Sec. 1, Ch. 10, L. 1955; amd. Sec. 4, Ch. 388, L. 1975; R.C.M. 1947, 46-2704; amd. Sec. 1, Ch. 258, L. 1979.**

81-6-105. Special livestock deputy — duties — compensation. The county livestock protective committee may recommend to the board of county commissioners the appointment of a special livestock deputy, satisfactory to the department and the sheriff, whose duties are to assist the department and the sheriff in the enforcement of hide and brand inspection laws, laws governing the movement and sale of livestock and the treatment and prevention of livestock diseases, laws pertaining to the apprehension of livestock rustlers and the prevention of rustling, and other laws which are of particular concern to the livestock industry of the county, particularly as regards cattle. The special livestock deputy may receive a commission from the department and appointment as a deputy from the sheriff of the county and shall give the bond for the faithful performance of his duties as required from officers performing similar duties. The special livestock deputy shall receive compensation for his services and for mileage traveled in the performance of his duties in an amount set by the board of county commissioners on the recommendation of the committee, to be paid from the stockmen's special deputy fund and from the county general fund in the proportions set by the board of county commissioners.

History: **En. Sec. 5, Ch. 168, L. 1953; amd. Sec. 181, Ch. 310, L. 1974; R.C.M. 1947, 46-2705.**

81-6-106. Discontinuing county livestock protective committee. Upon receipt of a petition or petitions signed as provided in 81-6-101, the board of county commissioners shall discontinue said county livestock protective committee, provided, however, that such action in discontinuing said committee shall not affect any levy made prior to the receipt of such petition or petitions and the proceeds of any levy made shall be used for the purposes as in this part set out. No district shall be discontinued so long as there is any outstanding indebtedness against it.

History: **En. Sec. 6, Ch. 168, L. 1953; amd. Sec. 2, Ch. 204, L. 1967; R.C.M. 1947, 46-2706.**

81-6-107. Cooperation with committee by adjoining county. The board of county commissioners of any county adjoining a county availing itself of the provisions of this part may cooperate in the administration of this part.

History: **En. Sec. 7, Ch. 168, L. 1953; R.C.M. 1947, 46-2707.**

81-6-108. County participation in defraying part of administrative expenses. Nothing in this part shall be construed to limit or deprive the board of county commissioners to participate in defraying a part of the expense of the administration of this part.

History: **En. Sec. 8, Ch. 168, L. 1953; R.C.M. 1947, 46-2708.**

Part 2

Cattle Protective Districts

81-6-201. Formation of districts in two or more counties authorized — petition of cattle owners — declaration by county commissioners. A cattle protective district embracing all or parts of two or more counties may be formed upon the filing of petitions by the cattle growers of such counties with the boards of county commissioners of each county to be wholly or partially included in the district. Such petitions must be signed by at least 51% of the cattle owners owning 55% of cattle for the protection of which the district is to be formed residing within the area designated as part of the district in each of the counties affected. Upon receipt of such a petition, each board of county commissioners must within 30 days declare the designated portion of its county a part of such cattle protective district, and the district shall be formed immediately upon the action of the last board of county commissioners to act.

History: En. Sec. 1, Ch. 181, L. 1963; R.C.M. 1947, 46-2801.

81-6-202. Selection of cattle protective committee members. Each county wholly or partially included in such district shall be entitled to three members of the district cattle protective committee who shall be chosen in the same manner as members of county cattle protective committees under 81-6-101.

History: En. Sec. 2, Ch. 181, L. 1963; R.C.M. 1947, 46-2802.

81-6-203. Powers and duties of protective committees. District cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of part 1 of this chapter.

History: En. Sec. 3, Ch. 181, L. 1963; R.C.M. 1947, 46-2803.

81-6-204. Tax levy — deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed 50 cents per head on all assessable cattle in the district on January 1, and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property and when collected to be deposited in the county treasury of one of the counties in the district, to be selected by the district cattle protective committee, in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.

History: En. Sec. 4, Ch. 181, L. 1963; amd. Sec. 5, Ch. 388, L. 1975; R.C.M. 1947, 46-2804; amd. Sec. 2, Ch. 258, L. 1979.

81-6-205. Removal of area from protective district — discontinuance of district — levy saved. Upon receipt of a petition or petitions signed in the same number and the same manner as the petition to form the district provided for in 81-6-201, a board of county commissioners shall remove the area in its county from the cattle protective district or the boards of county commissioners of all of the counties affected may discontinue the entire cattle protective district, provided, however, that such action in discontinuing said district or part of district shall not affect any levy made prior to the receipt of such petition or petitions and the proceeds of any levy made shall be used for the purposes as in this part set out. No district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against it.

History: **En. Sec. 5, Ch. 181, L. 1963; amd. Sec. 1, Ch. 204, L. 1967; R.C.M. 1947, 46-2805.**

81-6-206. Formation of county district authorized — petition of cattle owners — declaration by county commissioners. A cattle protective district embracing part of one county in the state of Montana may be formed upon the filing of a petition by cattle growers within said district with the board of county commissioners in said county. Such petition must be signed by at least 51% of the cattle owners owning 55% of the cattle for the protection of which the district is to be formed residing within the area designated. Upon receipt of such petition, the board of county commissioners must within 30 days declare the designated portion of its county a cattle protective district and the district shall be formed immediately thereafter.

History: **En. Sec. 1, Ch. 91, L. 1965; R.C.M. 1947, 46-2806.**

81-6-207. Selection of cattle protective committee members. Each cattle protective district shall be entitled to three members, who shall be chosen in the same manner as members of a county cattle protective committee under 81-6-101.

History: **En. Sec. 2, Ch. 91, L. 1965; R.C.M. 1947, 46-2807.**

81-6-208. Powers and duties of protective committees. Such district cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of part 1 of this chapter.

History: **En. Sec. 3, Ch. 91, L. 1965; R.C.M. 1947, 46-2808.**

81-6-209. Tax levy — deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed 50 cents per head on all assessable cattle in the district on January 1, and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property and when collected to be deposited in the county treasury in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.

History: **En. Sec. 4, Ch. 91, L. 1965; amd. Sec. 6, Ch. 388, L. 1975; R.C.M. 1947, 46-2809; amd. Sec. 3, Ch. 258, L. 1979.**

81-6-210. Discontinuance of district — levy saved. Upon receipt of a petition or of petitions signed in the same number and in the same manner as the petition to form the district, as herein provided, the board of county commissioners shall discontinue the cattle protective district, provided, however, that such action in discontinuing said district shall not affect any levy made prior to the receipt of such petition or petitions and the proceeds of any levy made shall be used for the purposes as in this part set out.

No district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 5, Ch. 91, L. 1965; amd. Sec. 3, Ch. 204, L. 1967; R.C.M. 1947, 46-2810.

CHAPTER 7

PREDATORY ANIMAL CONTROL

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Part 1

Predatory Animal Control

81-7-101. Definition. For the purpose of this part the term "wild animal" shall include coyote, lynx, and any other animal causing depredations upon livestock.

History: En. Sec. 1, Ch. 73, L. 1923; re-en. Sec. 3417.1, R.C.M. 1935; amd. Sec. 2, Ch. 27, L. 1974; amd. Sec. 2, Ch. 67, L. 1975; amd. Sec. 5, Ch. 235, L. 1977; R.C.M. 1947, 46-1902.

81-7-102. Department to supervise destruction of predatory animals — cooperation with other agencies — administration of moneys. (1) The department of livestock shall conduct the destruction, extermination, and control of wild animals predatory in nature and capable of killing, destroying, maiming, or injuring domestic livestock or domestic poultry, and the protection and safeguarding of livestock and poultry in this state against depredations from these animals. The department shall formulate the practical programs for accomplishing these objectives in this state and for carrying out the programs in an efficient and practical manner responsive to the need for control in each area of this state.

(2) The department shall adopt rules applicable to predatory animal control which are necessary and proper for the systematic destruction of the wild animals by hunting, trapping, and poisoning operations and payments of bounties. The department shall make field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, which are appropriate in the various areas at different seasons of the year, taking into consideration the habits, presence, migrations, or movements of the animals and their attacks on livestock and poultry, either singly or in packs or bands.

(3) The department shall cooperate with authorized representatives of the federal government, including the biological survey and the fish and wildlife service, the department of fish, wildlife, and parks, boards of county commissioners, voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers, and sportsmen, and corporations and individuals, in the systematic destruction of wild animals by hunting, trapping, and poisoning operations.

(4) This section and 81-7-103 do not interfere with or impair the power and duties of the department of fish, wildlife, and parks in the control of predatory animals by the department of fish, wildlife, and parks as authorized by law, or the obligation of the department of fish, wildlife, and parks to expend its funds in cooperation with the department for predatory animal control as required by law. Funds of the department of fish, wildlife, and

parks for the cooperative predatory animal control shall be administered and expended by the department of fish, wildlife, and parks.

History: En. Sec. 2, Ch. 73, L. 1923; re-en. Sec. 3417.2, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1947; amd. Sec. 98, Ch. 147, L. 1963; amd. Sec. 21, Ch. 100, L. 1973; amd. Sec. 3, Ch. 27, L. 1974; amd. Sec. 150, Ch. 310, L. 1974; amd. Sec. 3, Ch. 67, L. 1975; amd. Sec. 6, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 46-1903(1), (3); amd. Sec. 2, Ch. 218, L. 1979.

81-7-103. Administration of funds by the department. The department shall administer and expend for predatory animal extermination and control all money which is made available to it, including the money from the levy under 81-7-104 and all money which is made available to the department by appropriations made by the legislature for predatory animal control by the department. The department shall expend the funds for predatory animal control by all effective means responsive to the necessities of control in various areas of the state, including employment of hunters, trappers, and other personnel, procurement of traps, poisons, equipment, and supplies, and payment of bounties in the discretion of the department at those times of the year it considers advisable.

History: Ap. p. Sec. 2, Ch. 73, L. 1923; re-en. Sec. 3417.2, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1947; amd. Sec. 98, Ch. 147, L. 1963; amd. Sec. 21, Ch. 100, L. 1973; amd. Sec. 3, Ch. 27, L. 1974; amd. Sec. 150, Ch. 310, L. 1974; amd. Sec. 3, Ch. 67, L. 1975; amd. Sec. 6, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 46-1903, R.C.M. 1947; Ap. p. Sec. 4 ½, Ch. 73, L. 1923; re-en. Sec. 2081.1, R.C.M. 1935; amd. Sec. 4, Ch. 422, L. 1975; Sec. 84-5215, R.C.M. 1947; R.C.M. 1947, 46-1903(2), 84-5215.

81-7-104. Levy for predator control moneys — use of proceeds. (1) The department of revenue shall annually levy an ad valorem tax on all livestock in the state of Montana for the purpose of protecting them against destruction, depredation, and injury by wild animals, whether the livestock is on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. This protection may be by any means of effective predatory animal destruction, extermination, and control, including systematic hunting and trapping and payment of bounties. The tax levy may not exceed in any one year 7.5 mills on the taxable value of all sheep and 5 mills on the taxable value of other livestock.

(2) The moneys received from the tax levies shall be transmitted monthly with other taxes for state purposes by the county treasurer of each county to the state treasury. The state treasurer shall place the money in an earmarked revenue fund with the other moneys as provided in 81-7-119. The moneys shall thereafter be paid out only on claims duly and regularly presented to the department of livestock and approved by the department in accordance with the law applicable either to claims for bounties or for other expenditures necessary and proper for predatory animal control by means and methods other than payment of bounties, as determined by the department. All the moneys shall be available for the payment of bounty claims and for expenditures for planned, seasonal, or other campaigns directed or operated by the department in cooperation with other agencies for the systematic destruction, extermination, and control of predatory wild animals, as determined by the department and its advisory committee. No claims may be approved in excess of moneys available for such purposes, and no warrants may be registered against the moneys.

History: En. Sec. 6, Ch. 127, L. 1915; re-en. Sec. 2081, R.C.M. 1921; amd. Sec. 4, Ch. 73, L. 1923; amd. Sec. 2, Ch. 152, L. 1929; re-en. Sec. 2081, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1947;

amd. Sec. 103, Ch. 147, L. 1963; amd. Sec. 54, Ch. 100, L. 1973; amd. Sec. 108, Ch. 405, L. 1973; amd. Sec. 3, Ch. 422, L. 1975; amd. Sec. 62, Ch. 566, L. 1977; R.C.M. 1947, 84-5214.

81-7-105. Disposition of proceeds from sale of skins, hides, and specimens — presenting to museums. Furs, skins, and specimens taken by hunters or trappers shall be sold by the department. The proceeds from the sales shall be credited to the earmarked revenue fund. The proceeds shall be used to carry out the provisions of 81-7-101 through 81-7-105. Specimens may be presented free of charge to a state museum or institution.

History: En. Sec. 3, Ch. 73, L. 1923; re-en. Sec. 3417.3, R.C.M. 1935; amd. Sec. 99, Ch. 147, L. 1963; amd. Sec. 151, Ch. 310, L. 1974; R.C.M. 1947, 46-1904.

81-7-106 through 81-7-110 reserved.

81-7-111. Evidence of killing by bounty claimant. (1) Any person killing any of the aforesaid animals, except mountain lions, to obtain bounty thereon shall within 30 days of the date of the killing:

(a) exhibit the entire skin or skins of the said animal or animals, including the entire head with ears, the tail, and all four paws to the bounty inspector nearest to the locality in which the animal or animals were killed; and

(b) at the same time file with the bounty inspector, as hereinafter provided, an affidavit setting forth:

(i) that he killed the animal or animals from which the skin or skins were taken;

(ii) that the same was killed nearer to or, if more than one hide is presented, that the greater number were killed nearer to the residence of the said bounty inspector to which the same was presented than to any other bounty inspector; and

(iii) the county or counties in which said animals were killed.

(2) Any person killing any mountain lion to obtain bounty thereon shall present the same to a bounty inspector as provided in this section for wolves and coyotes, except that, in addition to the requirements of this section, the skins of mountain lions shall also contain the entire skin of the lower jaw, which shall be severed by the bounty inspector and thereafter treated in the same manner as scalps of wolves and coyotes herein provided.

(3) Every bounty inspector appointed under the provisions of 81-7-111 through 81-7-122 shall be empowered to administer oaths to any and all persons making any affidavit as aforesaid.

History: En. Sec. 2, Ch. 109, L. 1925; re-en. Sec. 3417.5, R.C.M. 1935; R.C.M. 1947, 46-1906.

81-7-112. Bounty inspectors. The sheriff of a county and undersheriffs and deputy sheriffs located at the county seat but not elsewhere shall receive and examine skins and pelts presented for bounty in their respective counties. The sheriff shall receive 10 cents for each skin examined, this amount to be paid by the owner of the skin.

History: En. Sec. 3, Ch. 109, L. 1925; re-en. Sec. 3417.6, R.C.M. 1935; amd. Sec. 152, Ch. 310, L. 1974; R.C.M. 1947, 46-1907(part).

81-7-113. Claim for bounty. (1) A sheriff, undersheriff, and deputy sheriff, to prevent fraud, shall carefully examine each skin presented. If the examination discloses that the scalp and ears with the skin from the entire head of the animal have not been severed, punched, patched, or marked, he shall, in the presence of the person presenting the skin, mark the skin by severing the skin from the head, including the ears, and then redeliver the skin to the person presenting it and shall require an affidavit from the claimant that the claimant killed the animal. The affidavit shall be on forms prescribed by the department and contain information the department requires.

(2) The officer shall require affidavits from two resident taxpayers residing in the vicinity in which the animal was killed, setting forth that they are resident taxpayers on livestock, giving their post-office addresses, and stating that they are personally acquainted with the person presenting the skin and, to their knowledge, the person did kill the animal from which the skin was taken within 30 days preceding the offering of the skin for a bounty to the sheriff, undersheriff, or deputy sheriff to which it is presented. A taxpayer who makes a false certificate or affidavit under this section in a material portion is guilty of a felony, punishable the same as for the crime of perjury.

History: En. Sec. 3, Ch. 109, L. 1925; re-en. Sec. 3417.6, R.C.M. 1935; amd. Sec. 152, Ch. 310, L. 1974; R.C.M. 1947, 46-1907(part).

81-7-114. Certificate and record of sheriff. (1) The officer shall at the same time make out and deliver to the person a certificate addressed to the county clerk of his county and immediately deliver to the county clerk a duplicate of the certificate, showing the date, number, and kind of skins marked for severing and the name of the person presenting the skins. The certificate shall also recite that the filing of the affidavits of taxpayers previously required has been done and the examination has been made as required. The certificate shall be signed by the officer in his official capacity. When a doubt exists as to the kind of skin presented, whether wolf or coyote, the certificate shall be issued for the lesser bounty. Each sheriff shall keep a record of all skins marked and severed, showing the date, number, and kinds and the names of the persons presenting the skins. This record is an official record. The sheriff, undersheriff, or deputy sheriff may not perform any duties under 81-7-111 through 81-7-122 except at the county seat.

(2) The sheriff shall, not later than the 15th of each month, give to the county clerk and recorder a report setting forth the names of the persons presenting skins, with the number of the certificate and the kind and number of the skins presented. The sheriff shall report for each certificate which he has issued during the month.

History: En. Sec. 3, Ch. 109, L. 1925; re-en. Sec. 3417.6, R.C.M. 1935; amd. Sec. 152, Ch. 310, L. 1974; R.C.M. 1947, 46-1907(part).

81-7-115. Duty of county clerk. (1) The county clerk shall, on receipt of each certificate, file the certificate in the order in which it is received and safely keep it until the arrival of the skin or skins mentioned in the certificate. On receipt of the skin or skins he shall call to his assistance either the county treasurer or, in his absence, the clerk of the district court who, with both present in order to prevent fraud, shall examine each scalp or mountain lion lower jaw skin. If the examination discloses that the scalps or lower jaw skins agree with the number and kind of scalps or lower jaw skins mentioned in the certificate, the county clerk shall, in the presence of the treasurer or clerk of the district court, destroy the scalps or lower jaw skins by fire.

(2) The county clerk shall then make out and deliver to the person named in that certificate a second certificate showing the statement of the facts contained in the certificate to the sheriff, undersheriff, or deputy sheriff, with the additional statement of the examination made by him and that he found the scalps or lower jaw skins to agree with the number and kind mentioned in the certificate of the sheriff, undersheriff, or deputy sheriff. In no case may a bounty certificate be issued by the county clerk for more scalps or lower jaw skins than are actually received and counted by him.

(3) The county clerk shall receive, for each scalp or skin of a mountain lion lower jaw which he accounts for, the sum of 5 cents to be paid quarterly by the state treasurer out of the bounty fund.

(4) The county clerk shall keep a record of all certificates received and issued, showing the date and description of the number and kind of hides and the names of the persons presenting the hides, and this record is an official record. County clerks are required to send a report and statement to the department on or before the 20th of each month.

History: En. Sec. 3, Ch. 109, L. 1925; re-en. Sec. 3417.6, R.C.M. 1935; amd. Sec. 152, Ch. 310, L. 1974; R.C.M. 1947, 46-1907(3); amd. Sec. 5, Ch. 14, L. 1979.

81-7-116. Bounty claims and certificates to be filed with department. Bounty claims and certificates issued by the county clerk and recorders under 81-7-115 shall be filed with the department and registered in a book provided for that purpose.

History: En. Sec. 4, Ch. 109, L. 1925; re-en. Sec. 3417.7, R.C.M. 1935; amd. Sec. 153, Ch. 310, L. 1974; R.C.M. 1947, 46-1908.

81-7-117. Department to examine claims and certificates — approval or disapproval of claims. The department shall examine and investigate every bounty claim and certificate filed with the department. When it makes the examination and investigation, the department may require the holder of a certificate or claim to furnish the department with the additional evidence or proof about the certificate or claim which the department considers necessary. The evidence may be either oral or documented, as required by the department. The department shall, after making the examination and investigation, endorse on the certificate or claim its approval or disapproval of it, and if the certificate or claim or any part of it is disapproved, the endorsement shall state the reasons for the disapproval. If a certificate or claim is approved, it shall be processed as provided by law.

History: En. Sec. 5, Ch. 109, L. 1925; re-en. Sec. 3417.8, R.C.M. 1935; amd. Sec. 23, Ch. 97, L. 1961; amd. Sec. 154, Ch. 310, L. 1974; R.C.M. 1947, 46-1909.

81-7-118. Levy of tax for purpose of paying bounty claims — limitation on levy. The department of revenue shall annually prescribe the levy recommended by the department to be made against livestock of all classes for paying for the destruction of wild animals killed in this state. The tax in any 1 year may not exceed 7.5 mills on the taxable value of the livestock. The money received shall be used only for the payment of claims approved by the department for the destruction of wild animals and for the administration of 81-7-111 through 81-7-122. The money received for the taxes levied shall be sent annually with other taxes to the state treasurer by the county treasurer of each county. When the money is received by the state treasurer, it shall be placed in the earmarked revenue fund and may then be paid out on claims approved under the law governing the payment of claims.

History: En. Sec. 10, Ch. 109, L. 1925; re-en. Sec. 3417.13, R.C.M. 1935; amd. Sec. 24, Ch. 97, L. 1961; amd. Sec. 101, Ch. 147, L. 1963; amd. Sec. 156, Ch. 310, L. 1974; amd. Sec. 42, Ch. 566, L. 1977; R.C.M. 1947, 46-1914.

81-7-119. County license money to be used for predator control. For the purpose of providing for predator control, 5% of all license money collected by the several county treasurers of the state, as provided in 7-21-2105, as amended shall be paid over by the county treasurers to the state treasurer and shall be deposited by the latter in the earmarked revenue fund.

History: En. Sec. 3075, Pol. C. 1895; re-en. Sec. 1909, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1921; re-en. Sec. 3414, R.C.M. 1921; re-en. Sec. 3414, R.C.M. 1935; amd. Sec. 97, Ch. 147, L. 1963; R.C.M. 1947, 46-1901; amd. Sec. 6, Ch. 14, L. 1979.

81-7-120. Use of funds remaining after payment of bounties — sale of furs, skins, and specimens — presentation to museums. (1) If, at the end of a bounty paying season, there is surplus money available for the administration of 81-7-111 through 81-7-122, the surplus may be used to hire salaried hunters and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

(2) All furs, skins, and specimens taken by hunters or trappers whose salaries are paid in whole or in part out of this money shall be sold by the department, and the proceeds from these sales shall be credited to the earmarked revenue fund. These funds shall be used to carry out 81-7-111 through 81-7-122. Specimens may be presented free of charge to a state museum or institution.

History: En. Sec. 8, Ch. 109, L. 1925; re-en. Sec. 3417.11, R.C.M. 1935; amd. Sec. 100, Ch. 147, L. 1963; amd. Sec. 155, Ch. 310, L. 1974; R.C.M. 1947, 46-1912.

81-7-121. Falsifying certificates or affidavits — penalty. Any person who falsely makes, alters, forges, or counterfeits any of the certificates or orders and any person who falsely swears to any affidavit provided for by 81-7-111 through 81-7-122 or procures the same to be done by another, with the intent of obtaining any one of the certificates or orders, is punishable as provided in Title 45.

History: En. Sec. 9, Ch. 109, L. 1925; re-en. Sec. 3417.12, R.C.M. 1935; R.C.M. 1947, 46-1913; amd. Sec. 7, Ch. 14, L. 1979.

81-7-122. Penalty for fraudulent claims. Any person or persons who shall patch up any skin or scalp or who shall present any punched or patched skin or scalp or who shall bring in any skin or skins from other states or territory with the intent to obtain the bounty on the same fraudulently or any officer who shall sign any certificate herein provided for without first counting the skins and examining the same to determine the kind of skins and to see that the skin from the scalp or head is properly severed and preserved as hereinbefore provided or shall evade or violate any provision of any law of the state of Montana relative to bounties or bounty claims shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 1 year or by both such fine and imprisonment and two-thirds of the fine, if the same be collected or can be collected, shall be given to the informer and the balance be deposited in the earmarked revenue fund and used for the administration of 81-7-111 through 81-7-122.

History: En. Sec. 11, Ch. 109, L. 1925; re-en. Sec. 3417.14, R.C.M. 1935; amd. Sec. 102, Ch. 147, L. 1963; R.C.M. 1947, 46-1915.

Part 2

County Bounty Program

81-7-201. County levy for bounties on predatory animals. Whenever the owners, agent, or agents of the owners representing 51% of the livestock of any county in this state present a petition to the board of county commissioners of such county asking for the levy of a tax upon the livestock of the county for the purpose of paying bounties on predatory animals killed in the county, it is the duty of the board of county commissioners to make the levy, which may not exceed 50 mills on the dollar of the taxable value of all livestock in the county. The tax shall be assessed and collected in the same manner as all other state and county taxes.

History: En. Sec. 1, Ch. 180, L. 1921; re-en. Sec. 2082, R.C.M. 1921; re-en. Sec. 2082, R.C.M. 1935; amd. Sec. 63, Ch. 566, L. 1977; R.C.M. 1947, 84-5216.

81-7-202. Signers of petition — time for presenting — limitation on bounties — bounty inspectors. (1) The petition provided for in 81-7-201 shall be signed by the owners, agent, or agents of not less than 51% of the livestock of such county as ascertained from the assessment books of such county and shall recommend to the board of county commissioners the bounties to be paid on such predatory animals, which shall not exceed the following:

(a) on each wolf or mountain lion, $100;
(b) on each wolf pup or mountain lion kitten, $20;
(c) on one coyote, $5;
(d) on each coyote pup, $2.50.

(2) Such petition shall be presented not later than August 1 of each year, and the board of county commissioners on determining the sufficiency of such petition shall make an order granting such petition, which order shall fix the levy for that year and the amount of the bounties to be paid for the killing of each such predatory animal, which shall not exceed the amounts recommended in such petition, and appoint not less than 10 or more than 20 stockowners of such county to be bounty inspectors under this part, without compensation, who shall hold their offices for 1 year.

History: En. Sec. 2, Ch. 180, L. 1921; re-en. Sec. 2083, R.C.M. 1921; amd. Sec. 1, Ch. 37, L. 1923; re-en. Sec. 2083, R.C.M. 1935; R.C.M. 1947, 84-5217.

81-7-203. County bounty fund. The tax collected under this part shall be credited by the county treasurer to a fund to be known as "county bounty fund" and shall be paid out by him upon properly drawn warrants issued thereon by the county clerk.

History: En. Sec. 3, Ch. 180, L. 1921; re-en. Sec. 2084, R.C.M. 1921; re-en. Sec. 2084, R.C.M. 1935; R.C.M. 1947, 84-5218.

81-7-204. Presentation of skins — affidavit. Any person claiming bounty on any predatory animal under this part shall present the green skin or pelt of such animal, with all four feet attached thereto, to any one of the bounty inspectors provided for in 81-7-202 and shall make an affidavit that such animal was killed within the county where the bounty is claimed, which affidavit shall be corroborated by at least two reputable stockowners of such county to the effect that they know or have good cause to believe that such animal was killed within such county. For the purpose of this part, each bounty inspector provided for in this part shall be empowered to administer oaths. The bounty inspector shall endorse upon such affidavit his approval or disapproval of such claim and shall cut from such skin or pelt the four feet. The person applying for such bounty shall then present the affidavit, with the endorsements thereon, to the county auditor or, in counties not having an auditor, to the county clerk, who shall attach the same to a claim against said county bounty fund and present it to the board of county commissioners for action, the same as any other claim against the county.

History: En. Sec. 4, Ch. 180, L. 1921; re-en. Sec. 2085, R.C.M. 1921; re-en. Sec. 2085, R.C.M. 1935; R.C.M. 1947, 84-5219.

81-7-205. County clerk to provide forms. The county clerk shall provide the necessary forms of affidavits and claims for carrying out the provisions of this part.

History: En. Sec. 5, Ch. 180, L. 1921; re-en. Sec. 2086, R.C.M. 1921; re-en. Sec. 2086, R.C.M. 1935; R.C.M. 1947, 84-5220.

81-7-206. Existing bounty laws not affected. Nothing in this part contained shall be construed as interfering with, in any way, or repealing any part of the existing laws of the state relative to the levying of taxes for and paying of the bounties on predatory animals under such state laws.

History: En. Sec. 6, Ch. 180, L. 1921; re-en. Sec. 2087, R.C.M. 1921; re-en. Sec. 2087, R.C.M. 1935; R.C.M. 1947, 84-5221.

Part 3

County Predator Control for Protection of Sheep

81-7-301. Definition. The word "owners" or "persons" shall include natural persons, partnerships, corporations, trusts, and estates.

History: En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1, Ch. 87, L. 1957; amd. Sec. 1, Ch. 87, L. 1965; amd. Sec. 1, Ch. 261, L. 1977; R.C.M. 1947, 46-2102(part).

81-7-302. County commissioners to conduct predatory animal control program for protection of sheep. For the protection of sheep against depredations peculiar to such animals, the board of county commissioners of any county shall upon the recommendation of organized associations of sheep growers in the county have power, either alone or in conjunction with other counties, to conduct a predatory animal control program for the protection of sheep in such county or counties.

History: **En. Sec. 1, Ch. 206, L. 1943; R.C.M. 1947, 46-2101.**

81-7-303. County commissioners permitted to require per capita license fee on sheep. (1) To defray the expense of such protection the board of county commissioners of any county shall have the power to require all owners or persons in possession of any sheep coming 1 year old or over in the county on the regular assessment date of each year to pay a license fee of not exceeding 50 cents per head of sheep so owned or possessed by him in the county. All owners or persons in possession of any sheep coming 1 year old or over coming into the county after the regular assessment date and subject to taxation under the provisions of 15-24-301 shall also be subject to payment of the license fee herein prescribed.

(2) Upon the order of the board of county commissioners such license fees may be imposed by the entry thereof in the name of the licensee upon the property tax rolls of the county by the county assessor. Said license fees shall be payable to and collected by the county treasurer, and when so levied, shall be a lien upon the property, both real and personal, of the licensee. In case the person against whom said license fee is levied owns no real estate against which said license fee is or may become a lien, then said license fee shall be payable immediately upon its levy and the treasurer shall collect the same in the manner provided by law for the collection of personal property taxes which are not a lien upon real estate.

(3) When collected, said fees shall be placed by the treasurer in the predatory animal control fund and the moneys in said fund shall be expended on order of the board of county commissioners of the county for predatory animal control only.

History: **En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1, Ch. 87, L. 1957; amd. Sec. 1, Ch. 87, L. 1965; amd. Sec. 1, Ch. 261, L. 1977; R.C.M. 1947, 46-2102(part).**

81-7-304. Proceeds of furs and skins taken. All furs, skins, and so forth taken by the expenditure of license funds shall be sold and the proceeds of such sale deposited in said predatory animal control fund for the use in carrying out the purpose of this part.

History: **En. Sec. 3, Ch. 206, L. 1943; R.C.M. 1947, 46-2103.**

81-7-305. Duty of county commissioners — petition of sheep owners — license fees. (1) In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for such program and its incidents as made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, which petition shall be filed with the board of county commissioners on or before the first Monday in December in any year, such board shall establish the predatory animal control program and cause said licenses to be secured and issued and the fees collected for the following year in such amount, not exceeding the limits of 50 cents per head of sheep as shown by said assessment rolls, as will defray the cost of administering the program so established. The license fee determined and set by the board, within said limits, shall remain in full force and effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee, in which event the program shall by order of the board of county commissioners be disestablished and the license fee shall not be further levied.

(2) If the resident owners of at least 51% of the sheep in the county either petition for an increase in the license fee, subject always to the maximum limitation of 50 cents per head of sheep, or petition for a decrease in the license fee then in force, the board of county commissioners shall upon receipt of any such petition fix a new license fee to continue from year to year and the program shall thereupon continue within the limits of the aggregate amount of the license fee as collected from year to year.

History: En. Sec. 4, Ch. 206, L. 1943; amd. Sec. 1, Ch. 24, L. 1949; amd. Sec. 2, Ch. 87, L. 1957; amd. Sec. 2, Ch. 87, L. 1965; amd. Sec. 2, Ch. 261, L. 1977; R.C.M. 1947, 46-2104.

Part 4

Dogs

81-7-401. Killing of dogs destroying or injuring stock — notice to owner. Any dog, whether licensed or not, which, while off the premises owned or under control of its owner, shall kill, wound, or injure any livestock not belonging to the master of such dog shall be deemed to be a public nuisance and may be killed forthwith by any person, or the owner, when notified, shall kill such dog within 24 hours, and if he fails to do so, an officer may be notified and shall kill or cause to be killed such dog. Nothing contained herein shall apply to any dog acting under the direction of its master or the agents or employees of such master.

History: En. Sec. 1, Ch. 142, L. 1933; re-en. Sec. 3417.15, R.C.M. 1935; R.C.M. 1947, 46-1916.

81-7-402. Liability of owner of dog for damages to livestock or poultry. (1) The owner of livestock or poultry injured or killed by any dog may recover as liquidated damages from the owner of the dog the actual value of the animals killed or the value of the damages sustained by reason of the injuries as the case may be. If two or more dogs kept by two or more owners or keepers injure or kill any livestock or poultry at the same time, the owners or keepers of the dogs are jointly and severally liable for such damages. It is no defense to the action that the owner or keeper of the dog had no knowledge of the dog's whereabouts at or prior to the time when the dog injured or killed livestock or poultry or that the owner or keeper of the dog had no knowledge of the dog's disposition or inclination to worry, kill, or injure livestock or poultry.

(2) The word "owner" when used in this section in relation to property interest in or possession of dogs includes every person who owns, harbors, or keeps a dog.

History: En. Secs. 14, 15, Ch. 280, L. 1959; R.C.M. 1947, 16-4614, 16-4615; amd. Sec. 8, Ch. 14, L. 1979.

81-7-403. Dogging livestock. Any person who permits or directs any dog owned by him or in his possession to chase or run any cattle or other livestock of which he is not the owner or the person in charge upon the open range or government lands or away from any watering place upon the open range is guilty of a misdemeanor and punishable by a fine of not more than $50.

History: **En. Sec. 1, Ch. 110, L. 1903; re-en. Sec. 8861, Rev. C. 1907; re-en. Sec. 11552, R.C.M. 1921; re-en. Sec. 11552, R.C.M. 1935; Sec. 94-3567, R.C.M. 1947; redes. 46-3001 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 56, Ch. 12, L. 1977; R.C.M. 1947, 46-3001.**

Part 5

Aerial Hunting of Predatory Animals

81-7-501. Aerial hunting prohibited — exceptions. (1) Except as provided in 81-7-505, no person except an employee of the state, its subdivisions, or the federal government, acting within the scope of his employment may engage in the aerial hunting of wild animals as defined in 81-7-101 without first obtaining a permit from the department of livestock.

(2) No person issued a permit as required by this section may engage in aerial hunting of wild animals in violation of the terms of his permit, the rules promulgated by the board of livestock, or the terms of this part.

History: **En. Sec. 1, Ch. 704, L. 1979.**

Compiler's Comments

Codification. Sec. 8, Ch. 704, L. 1979, provided: "Sections 1 through 7 in this act are intended to be codified as an integral part of Title 81, chapter 7, and the provisions contained in Title 81, chapter 7, apply to these sections." Sections 1 through 7 are now 81-7-501, 81-7-502, 81-7-504, 81-7-503, 81-7-505, 81-7-511, and 81-7-512, respectively.

81-7-502. Rulemaking authority. The department of livestock may adopt rules to effectuate the purposes of this part and to implement and conduct the aerial hunting permit system provided for by this part.

History: **En. Sec. 2, Ch. 704, L. 1979.**

Compiler's Comments

Statement of intent. The statement of intent attached to SB 497 (Ch. 704, L. 1979) provided: "Section 4 of this bill requires the Department of Livestock to adopt rules regulating aerial hunting. It is the intent of this bill that any rules so adopted not interfere with the needs of livestock producers protecting their livestock from predation. At the same time it is the intent of this bill that such rules protect the interests of persons who do not wish aerial hunting to occur over land in their control. Finally, such rules shall reflect the purpose that aerial hunting is permitted for the purpose of reducing livestock losses due to predation." The reference in this statement of intent to section 4 is apparently in error. Section 2 is apparently the correct reference, since it provides for rulemaking authority.

81-7-503. Residency requirement. No person not having residence and domicile in Montana may be issued a permit provided for in 81-7-501 except when authorized by the board of livestock.

History: **En. Sec. 4, Ch. 704, L. 1979.**

81-7-504. Duration of permit — fee. Each permit shall be valid for a period set by the department of livestock not to exceed 3 years and shall cost $50 or portion thereof if a period of less than a year is set. All fees for permits shall be paid to the department of livestock for deposit in the state treasury to the credit of the earmarked revenue fund for predatory animal control.

History: **En. Sec. 3, Ch. 704, L. 1979.**

81-7-505. Resident landowners authorized to aerially hunt over their own lands without permit — conditions. Any landowner having residence and domicile in Montana may engage in the aerial hunting of wild animals, as defined in 81-7-101, over his own land without a permit, provided he annually notifies the department in writing that he will be engaged in aerial hunting and gives an adequate description of the location of the land over which he will aerial hunt. Such hunting must be in accordance with all rules of the department of livestock.

History: **En. Sec. 5, Ch. 704, L. 1979.**

81-7-506 through 81-7-510 reserved.

81-7-511. Penalties — jurisdiction — revocation of permit. (1) Any person violating any provision of this part who is permitted to engage in aerial hunting pursuant to this part is guilty of a misdemeanor.

(2) A conviction for a violation of subsection (1) is punishable by a fine of not more than $500.

(3) Any person who is not permitted to engage in aerial hunting pursuant to this part who violates any provisions of this part is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than $250 or more than $1,000. A subsequent conviction under this subsection is punishable by a fine of not less than $500 or more than $1,000.

(4) The justice court has jurisdiction over violations of this part.

(5) The department may revoke or suspend the permit of anyone violating its terms.

History: **En. Sec. 6, Ch. 704, L. 1979.**

81-7-512. Enforcement. (1) Investigations of violations of this part, arrests, and seizures may be made by any peace officer, or agent of the department designated by the department.

(2) To enforce this part, the department may enter into agreement with federal agencies with predatory animal control. Such agreements may allow the federal agency to assist in investigations, arrests, and seizures.

History: **En. Sec. 7, Ch. 704, L. 1979.**

CHAPTER 8

MARKETING

Part 1 — Livestock Markets
(Sections 81-8-101 through 81-8-133 repealed.
Sec. 37, Ch. 566, L. 1979)

Part 2 — Livestock Markets, Dealers, and Brokers

Section
81-8-201 through 81-8-210. Repealed. Sec. 37, Ch. 566, L. 1979.
81-8-211. Short title.
81-8-212. Purpose.
81-8-213. Definitions.
81-8-214. Regulation of certain nonmarket sales.
81-8-215. Quarantine of diseased animals.

81-8-216. Penalties.
81-8-217. Jurisdiction.
Sections 81-8-218 through 81-8-230 reserved.
81-8-231. Duties of department.
81-8-232. Posting of certificate or license.
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Part 1

Livestock Markets (Sections 81-8-101 through 81-8-133 repealed. Sec. 37, Ch. 566, L. 1979)

Part 2

Livestock Markets, Dealers, and Brokers

81-8-201 through 81-8-210. Repealed. Sec. 37, Ch. 566, L. 1979.

81-8-211. Short title. This part may be cited as the "Montana Livestock Marketing Act".

History: En. Sec. 1, Ch. 566, L. 1979.

Compiler's Comments

Transition. Sec. 34, Ch. 566, L. 1979, provided: "Licenses and certificates issued before and still in effect on July 1, 1979, are valid until May 1, 1980, unless suspended or revoked pursuant to this act. The actions of persons holding such existing licenses and certificates are governed by this act."

Severability. Sec. 35, Ch. 566, L. 1979, provided: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act in invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Codification. Sec. 36, Ch. 566, L. 1979, provided: "This act is intended to be codified as an integral part of Title 81, chapter 8, and the provisions contained in Title 81, chapter 8, apply to this act."

81-8-212. Purpose. The purpose of this part is to:

(1) simplify, clarify, and modernize the law governing livestock marketing businesses and livestock marketing transactions;

(2) encourage, stimulate, and stabilize the livestock economy of the state; and

(3) promote open, free, and competitive factors in the market place in relation to all market conditions involving the sale and purchase of livestock.

History: **En. Sec. 2, Ch. 566, L. 1979.**

81-8-213. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of livestock provided for in 2-15-3102.

(2) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

(3) "Livestock" means cattle, calves, hogs, pigs, horses, mules, sheep, lambs, and goats.

(4) "Livestock broker" means a business, not including facilities, conducted for the receiving, handling, and care of livestock and involving livestock purchased by it for its own account for resale, for the account of any principal for delivery to him, or for slaughter. It does not include a farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation.

(5) "Livestock dealer" means a business conducted in facilities utilized for the receiving, handling, and care of livestock purchased by it for its own account for resale, for the account of any principal for delivery to him, or for slaughter. It does not include a farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation.

(6) "Livestock market" means a place where a person for compensation assembles livestock for sale, except:

(a) a place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing business and at which no other livestock is sold or offered for sale;

(b) a farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for fattening is sold and to which no other livestock is brought for sale or to be offered for sale;

(c) the premises of a butcher, packer, or processor who receives animals exclusively for immediate slaughter;

(d) the premises of a person engaged in the raising of livestock for breeding purposes only, who limits his sale to livestock of his own production;

(e) a place where a breeder or an association of breeders of livestock of any class assembles and offers for sale and sells under his or its own management any livestock, when the breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold.

(7) "Person" means an individual, firm, association, partnership, or corporation.

(8) "Test station sale" means the sale of livestock from a place where livestock is taken to measure rates of gain under uniform feeding conditions when that place is not owned by the owner of the livestock.

History: **En. Sec. 3, Ch. 566, L. 1979.**

81-8-214. Regulation of certain nonmarket sales. (1) A person not a livestock market operator authorized under this part conducting the sale of livestock in a breed sale, a breed association sale, or at a test station sale, except when all of the livestock are his and are being sold from his own place, shall obtain approval from the department before conducting the sale.

(2) The department, as conditions to granting approval, may require:

(a) the names and addresses of those conducting the sale;

(b) the date and time when and the place where the sale will be conducted;

(c) a detailed statement of the assets and liabilities of the persons conducting the sale;

(d) the establishment of a custodial account into which all money received for the sale of livestock must be deposited;

(e) the posting of a reasonable bond in an amount determined by the department;

(f) the commissions or charges proposed to be imposed on the owners of livestock for services associated with the sale;

(g) a guarantee to pay all consignors in full within a reasonable time as set by the department;

(h) such other information as the department considers necessary.

History: En. Sec. 16, Ch. 566, L. 1979.

81-8-215. Quarantine of diseased animals. If the livestock inspector at a sale finds any livestock afflicted with an infectious or contagious disease, he shall immediately take possession of the livestock and place it in quarantine, to be disposed of as directed by the department.

History: En. Sec. 21, Ch. 566, L. 1979.

81-8-216. Penalties. A person who violates any provision of 81-8-214, 81-8-215, and 81-8-251 through 81-8-263 or rules adopted by the department under 81-8-231 is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $600, imprisoned in the county jail not less than 30 days or more than 6 months, or both. A person convicted of a subsequent violation of 81-8-214, 81-8-215, and 81-8-251 through 81-8-263 or rules adopted under 81-8-231 shall be fined not less than $200 or more than $1,000, imprisoned in the county jail for not less than 3 months or more than 6 months, or both, and the department may cancel his certificate.

History: En. Sec. 24, Ch. 566, L. 1979.

81-8-217. Jurisdiction. The justices' courts have jurisdiction of all misdemeanor and civil violations of this part.

History: En. Sec. 32, Ch. 566, L. 1979.

81-8-218 through 81-8-230 reserved.

81-8-231. Duties of department. The department shall:

(1) supervise and regulate livestock markets, livestock brokers, and livestock dealers in this state;

(2) regulate the properties, facilities, operations, services, and practices of all livestock markets, livestock brokers, and livestock dealers;

(3) supervise and regulate livestock markets in all matters affecting the relationship between the livestock market and owners of livestock and between the livestock market and purchasers of livestock;

(4) prescribe by general order or otherwise rules in conformity with this part applicable to all livestock markets, livestock brokers, or livestock dealers

and not in conflict with the laws of the United States or regulations of the United States department of agriculture or other federal agencies;

(5) enforce this part and adopt rules necessary to carry out this part.

History: **En. Sec. 4, Ch. 566, L. 1979.**

Compiler's Comments

Statement of intent. The statement of intent attached to HB 800 (Ch. 566, L. 1979) provided: "The purpose of the 'Montana Livestock Marketing Act' as stated in the bill is to simplify, clarify, and modernize the law governing livestock marketing businesses and livestock marketing transactions; to promote open, free, and competitive factors in the market place in relation to all market conditions involving the sale and purchase of livestock; and to encourage, stimulate, and stabilize the livestock economy of the state.

The Department of Livestock is given, under section 4, authority to enforce and to adopt rules necessary to carry out the act. It is the legislative intent in delegating this rulemaking authority that the discretion granted the Department of Livestock is for the purpose of supervising and regulating livestock markets, livestock brokers, and livestock dealers in the state; of regulating the properties, facilities, operations, services, and practices of all livestock markets, livestock brokers, and livestock dealers; and of supervising and regulating livestock markets in all matters affecting the relationship between the livestock market and owners of livestock and between the livestock markets and purchasers of livestock.

A major concern of the act is to establish stiff penalties for unfair, deceptive, and fraudulent market practices. It is intended that by providing stricter penalties and that by giving the Department of Livestock authority to assess civil penalties for some violations, livestock marketing in Montana will be strengthened.

It is the intent of this bill that in the adoption of rules under section 4 and in the general enforcement of this act that the Livestock Department's first function is to protect livestock producers consigning livestock to markets or selling livestock to or through dealers and brokers. Secondly, it is the intent of the legislature that so long as the purpose of protecting livestock producers is met, the enforcement and rules under this act not unduly interfere with the operations of the businesses of livestock markets, livestock dealers, and livestock brokers."

81-8-232. Posting of certificate or license. Every person certified or licensed under the provisions of this part shall conspicuously post at his place of business for inspection by any other person the certificate or license issued by the department.

History: **En. Sec. 5, Ch. 566, L. 1979.**

81-8-233. Title warranty of livestock sold. A livestock market, livestock broker, or livestock dealer shall warrant to the purchaser thereof the title of all livestock sold. A livestock market is liable to the rightful owner of all livestock sold for the net proceeds for such livestock whether or not the rightful owner was known to the market at the time of the sale.

History: **En. Sec. 8, Ch. 566, L. 1979.**

81-8-234. Financial responsibility. (1) Every livestock market, livestock broker, or livestock dealer shall maintain a financial condition of total assets in excess of total liability, including total current assets in excess of total current liabilities.

(2) Payment for livestock purchased shall be made upon completion of the sales transaction. Payment in all livestock transactions shall be made by cash, check, or draft, as defined in 30-3-104; by electronic funds transfer, as defined in 32-6-103; or by any other bankable instrument.

History: **En. Sec. 6, Ch. 566, L. 1979.**

81-8-235. Penalties for financial violations. (1) A person found, after notice and hearing, to be in violation of 81-8-234 shall be assessed a civil penalty by the department of not less than $100 or more than $5,000, have his license or certificate suspended or revoked, or both.

(2) A person found, after notice and hearing, to have committed a subsequent violation of 81-8-234 after the department has assessed a penalty pursuant to subsection (1) shall be fined not less than $250 or more than $5,000 and have his license or certificate suspended or revoked.

(3) The maker of any bankable instrument who knowingly and without right fails to honor or causes another to dishonor that instrument once it is issued or delivered in payment for a livestock purchase is guilty of a felony and on conviction may be imprisoned for not more than 5 years or fined not more than $10,000, or both.

History: En. Sec. 7, Ch. 566, L. 1979.

81-8-236. Injunctive remedy. The operation of a livestock market or the buying or selling of livestock by a person not licensed or certified and bonded as required by this part may be enjoined by the district court on petition from the department upon a showing that a person is engaged in the business of a livestock market, livestock broker, or livestock dealer as defined in 81-8-213 without the license or certificate and bond required by this part. The court shall enjoin the person from further activities as a livestock market operator, livestock broker, or livestock dealer until the license or certificate and bond have been properly obtained. It is not necessary to show that any individual has been injured by the actions complained of in order to obtain the issuance of the injunction. The injunctive relief provided by this section is an additional remedy to the criminal penalties provided in this part.

History: En. Sec. 33, Ch. 566, L. 1979.

81-8-237 through 81-8-250 reserved.

81-8-251. Certificate to operate livestock market required — application. (1) A person may not operate a livestock market unless he first obtains from the department a certificate declaring that public convenience and necessity require the operation.

(2) The application for a certificate of public convenience shall be in writing, verified by the applicant, and filed with the department. It shall specify the following:

(a) the names of the persons applying for a certificate together with their permanent addresses. If the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

(b) the place where the applicant proposes to operate a livestock market;

(c) a complete description of the property and facilities proposed to be used for the livestock market;

(d) the commissions or charges the applicant proposes to impose on the consignors' livestock for services rendered to them by the applicant in the operation of the livestock market;

(e) the location of other livestock markets within a radius of 200 miles of the proposed livestock market and the names and addresses of the operators thereof;

(f) a detailed statement of the facts upon which the applicant relies to show public convenience and necessity for the livestock market, including the trade area to be served, the economic benefits to the livestock industry, the services to be offered, and the anticipated revenue from inspection that may be derived by the state;

(g) if the applicant is a foreign corporation, its principal place of business outside the state, the state in which it is incorporated, and a showing that it is in compliance with the laws relating to foreign corporations doing business in this state;

(h) a detailed financial statement showing that current assets exceed current liabilities and that long-term assets exceed long-term liabilities;

(i) any additional information the department may require.

History: **En. Sec. 9, Ch. 566, L. 1979.**

81-8-252. Hearing on application for certificate — decision. (1) Upon the filing of the application, the department shall fix a time and place for a hearing thereon, which may not be less than 10 days after the filing. The department shall have a copy of the application and notice of hearing served by mail upon:

(a) the operators of any other livestock markets that in the opinion of the department might be affected by the granting of any such certificate;

(b) the secretaries of the Montana stockgrowers association and the Montana woolgrowers association;

(c) the secretary of the district livestock association, if any;

(d) the secretary of the livestock association or associations, if any, within the vicinity of the proposed livestock market, if known to the department; and

(e) any railroad company operating into or through the town or city in which the proposed livestock market will be located.

(2) If, after the hearing on the application, the department finds from the evidence that public convenience and necessity require the authorization of the proposed livestock market, a certificate must be issued to the applicant. In determining whether public convenience and necessity require the livestock market, the department shall give reasonable consideration to the service rendered by other existing livestock markets in this state and the effect upon them if the proposed livestock market is authorized and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year.

History: **En. Sec. 10, Ch. 566, L. 1979.**

81-8-253. Transfer of certificate. The department may approve the transfer of ownership of a certificate of public convenience and necessity issued pursuant to this part without a determination and showing of public convenience and necessity. Such approval may be granted only after a public hearing at which the transferee's qualifications to operate a livestock market have been thoroughly examined and found sufficient to properly operate a livestock market. A minimum of 10 days' notice by mail must be given to all persons to whom notice is sent pursuant to the provisions of 81-8-252 of a hearing to consider an initial application for a certificate.

History: **En. Sec. 11, Ch. 566, L. 1979.**

81-8-254. Cancellation or suspension of certificate. (1) The department may cancel or suspend the certificate of an operator of a livestock market if it finds that the operator:

(a) is guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock;

(b) is in violation of any of the provisions of this part;

(c) is in violation of any of the rules adopted by the department; or

(d) is in violation of Title 81, chapter 3, part 2.

(2) The department on its own initiative or on written complaint may investigate a livestock market and may file a complaint against the livestock market with the board. The complaint shall be set for hearing before the board, and the department shall serve notice of the hearing on the livestock market at least 10 days before such hearing.

(3) An investigation or hearing initiated by the department under this part may be held before an examiner designated by the board. Any finding or order made by an examiner, if confirmed by the board, is the order or finding of the board.

History: **En. Sec. 14, Ch. 566, L. 1979.**

81-8-255. Appeal by holder of or applicant for certificate. An appeal of a decision of the department refusing to grant an application for a certificate or suspending or revoking a certificate of a livestock market shall be taken to the district court of the county in which the proposed livestock market is to be located or in which the authorized livestock market has its principal place of business. The appellant shall file a bond with the clerk of the district court in the sum of $300, to be approved by the judge, conditioned to pay all costs that may be awarded against the appellant in the event of an adverse decision or the decision of the department being affirmed. The cost of preparing transcripts shall be paid by appellant. In a case of suspension or revocation of a certificate, the filing of the notice and bond stays the order of the department until the final determination of the appeal. If the appellant fails to perfect the appeal, the stay shall automatically terminate.

History: **En. Sec. 15, Ch. 566, L. 1979.**

81-8-256. Fee to operate livestock market. A person operating a livestock market shall pay annually on May 1 a fee of $100 to the department. All fees shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the department.

History: **En. Sec. 12, Ch. 566, L. 1979.**

81-8-257. Bond requirement. (1) Every person operating a livestock market in this state shall provide a bond in favor of this state, upon a form and with sureties to be approved by the board, in the minimum sum of $10,000 or such greater sum as the board may determine, conditioned upon:

(a) the payment immediately upon the sale of the livestock of all money received, less reasonable expenses and commissions, by the livestock market to the rightful owner of livestock so consigned and delivered to it for sale; and

(b) a full compliance with this part including all rules adopted under this part.

(2) When approved, the bond shall be filed with the department.

(3) A civil action may be brought in the name of the state upon the bond for the use and benefit of a person who suffers loss or damage from violations thereof and may be brought by the person suffering loss or damage in the county of his residence.

History: En. Sec. 13, Ch. 566, L. 1979.

81-8-258. Records and reports. Each livestock market shall keep accounts, records, and memoranda and shall make reports which the board requires, and the board and its authorized agents and employees shall at all times have access to the accounts, records, and memoranda for inspection and examination.

History: En. Sec. 18, Ch. 566, L. 1979.

81-8-259. Occasional off-premises sales. (1) The department may authorize occasional off-premises sales by authorized livestock markets and may establish the conditions under which approval for an off-premises sale may be granted, including any change in bonding requirements the department considers necessary.

(2) No livestock market for which a certificate has been issued under this part may conduct an off-premises sale without obtaining prior approval of the department.

History: En. Sec. 17, Ch. 566, L. 1979.

81-8-260. Dispersal sales. Dispersal sales conducted through a livestock market must meet the requirements of this part.

History: En. Sec. 19, Ch. 566, L. 1979.

81-8-261. Inspection of public markets. Livestock inspectors, including stock inspectors of a county or district, the sheriff of a county, or a representative of the department of livestock, may enter upon the premises where livestock is being held or sold and shall be accorded every facility by the owners thereof in determining whether a violation of the law is being committed or is likely to be committed. The inspection may not unnecessarily interfere with the conduct of the sales. Livestock sold at the market may not be delivered to the purchaser until he has first received an inspection certificate issued by one of the officers mentioned in this section, showing clearly and explicitly that the person making the inspection is satisfied as to the ownership of the livestock and the health of all livestock so sold.

History: En. Sec. 20, Ch. 566, L. 1979.

81-8-262. Sale of animals of unknown ownership. (1) If there is any question respecting the ownership of livestock sold, the livestock inspector may take possession of the livestock. The livestock inspector shall notify the person in charge of the market and conducting the sales and the person who has purchased the livestock at the sale within a reasonable time.

(2) Whenever livestock is sold, the ownership of which is not known or cannot be determined by the livestock inspector, it may be sold as strays and the net proceeds derived from the sale shall be handled as provided in 81-8-263.

History: En. Sec. 22, Ch. 566, L. 1979.

81-8-263. Duties when ownership in doubt. An operator of a livestock market shall, when notified by the authorized brand inspector that there is a question as to whether any designated livestock sold through the market is lawfully owned by the consignor thereof, hold the proceeds received from the sale of the livestock for a reasonable time, not to exceed 30 days, to permit the consignor to establish ownership. If at the expiration of that time the consignor fails to establish his lawful ownership of the livestock, the proceeds must be transmitted by the operator of the livestock market to the department. The department may dispose of the proceeds in accordance with chapter 4, part 6, of Title 81, relating to the distribution of estray money, and the department's receipt therefor shall relieve the operator of the livestock market from further responsibility for the proceeds. Proof of ownership and account of all sales of livestock must be transmitted by the authorized brand inspector to the department.

History: **En. Sec. 23, Ch. 566, L. 1979.**

81-8-264 through 81-8-270 reserved.

81-8-271. License to operate as livestock broker or dealer — application. (1) No person may operate as a livestock broker or livestock dealer without a license. A person who wishes to operate as a livestock broker or livestock dealer shall file with the department an application for a license to transact such business on a form prescribed by the department stating the type of license sought and the following information:

(a) the names of the persons applying for the license together with their permanent addresses and, if the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

(b) the post-office address and principal place of business of the applicant;

(c) if the applicant is a foreign corporation, its principal place of business outside the state, the name of the state in which it is incorporated, and a statement showing that it has complied with the laws of this state relating to foreign corporations and its right to do business in this state;

(d) a detailed financial statement setting forth all assets and liabilities of the applicant pertinent to the business for which the license is sought;

(e) if the applicant is a livestock dealer, a description of the facilities at which he proposes to operate.

(2) An application fee of $50 must be submitted with each application for a livestock broker's or livestock dealer's license. The fee shall be the first annual fee if the license is granted.

History: **En. Sec. 25, Ch. 566, L. 1979.**

81-8-272. Issuance of license. When an applicant has paid the fee and met the requirements of 81-8-271, the department shall issue to the applicant a license which entitles the licensee to engage in the business specified in his application for a period of 1 year unless the license is suspended or revoked under this part.

History: **En. Sec. 25, Ch. 566, L. 1979.**

81-8-273. Refusal to issue or renew license. The department shall refuse to issue or renew a license if the applicant:

(1) has failed to maintain a financial condition of total assets in excess of total liabilities, including total current assets in excess of total current liabilities;

(2) is in violation of any of the provisions of this part;

(3) has knowingly made false or misleading statements as to the health or physical condition of livestock or practiced fraud or misrepresentation in connection with the buying or receiving of livestock or the selling, exchanging, soliciting, or negotiating of the sale of livestock or the weighing of the same;

(4) has failed to keep records of all purchases and sales or refused to grant inspection of such records by authorized agents of the department;

(5) is in violation of the rules adopted by the department;

(6) has failed to comply with a lawful order of the department;

(7) has not filed a surety bond in the form and amount required under 81-8-277;

(8) has been found by the department to have failed to pay, without reasonable cause, obligations incurred in connection with livestock transactions;

(9) has been suspended by the order of the secretary of agriculture of the United States department of agriculture under provisions of the Packers and Stockyards Act, 1921, as amended, 7 U.S.C. 181, et seq.

History: **En. Sec. 26, Ch. 566, L. 1979.**

81-8-274. Suspension or revocation of license. (1) Whenever the department finds that any livestock broker or livestock dealer has violated the provisions of this part or rules adopted under this part, the department may, by order, suspend the license of such person for a period not to exceed 1 year, and if the violation is repeated, the department may, by order, after hearing, permanently revoke the license of such person.

(2) Before any license issued under this part may be suspended or revoked, the licensee shall be furnished with a copy of the complaint made against him and a hearing shall be had before the department to determine whether the license should be suspended or revoked. The licensee shall be given notice of the time and the place of such hearing. The notice may be served by registered or certified mail at the post-office address listed in the application. The hearing must be held not less than 10 days or more than 30 days after the mailing of the notice. At the time and place set for the hearing, the department shall take and receive evidence, under oath, with respect to the complaint, and upon such evidence received, shall promptly dismiss the proceedings or revoke or suspend the license.

History: **En. Sec. 29, Ch. 566, L. 1979.**

81-8-275. Termination of license. A license issued under this part terminates at the close of business on May 1 of each year following the issuance of the same unless the annual fee has been paid. Termination of the license will automatically occur if the bond required by 81-8-277 is terminated.

History: **En. Sec. 30, Ch. 566, L. 1979.**

81-8-276. Annual fee and financial statement. Livestock brokers and livestock dealers shall pay an annual fee of $50 and supply a current financial statement. The fee is payable on May 1 to the state treasurer to the credit of the department.

History: En. Sec. 25, Ch. 566, L. 1979.

81-8-277. Bond requirement. (1) A livestock broker or livestock dealer applying for a license under this part shall maintain a bond in the form and amount set forth in this section, or if he is registered and bonded under the Packers and Stockyards Act, 1921, 7 U.S.C. 181, et seq., he shall file a statement with the department showing he is maintaining a bond or its equivalent under the Packers and Stockyards Act. The department may require evidence of the bond to be filed with it.

(2) The amount of the bond shall be set by the department but may not be less than $5,000. The bond shall contain the following conditions:

"This bond is conditioned on the principal paying to the rightful recipient the purchase price of all livestock he purchases for himself or others and on the principal safely keeping and properly disbursing all funds received on behalf of others."

(3) Each bond shall contain provisions that a person damaged by failure of the principal to comply with the condition clause of the bond may bring an action to recover on the bond. At least 30 days' notice in writing shall be given to the department by any party terminating the bond.

History: En. Sec. 27, Ch. 566, L. 1979.

81-8-278. Records. A livestock broker or livestock dealer shall maintain records that disclose all purchases and sales of livestock. A livestock broker or livestock dealer shall, at all reasonable times, give the department access to and let the department copy any of the records relating to his business.

History: En. Sec. 28, Ch. 566, L. 1979.

81-8-279. Penalties. A person who violates any provision of 81-8-271 through 81-8-273 and 81-8-276 through 81-8-278 or rules adopted by the department under 81-8-231 is guilty of a misdemeanor and upon conviction shall be fined not less than $250 or more than $1,000 or imprisoned for not more than 6 months, or both.

History: En. Sec. 31, Ch. 566, L. 1979.

Part 3

Security Interests Concerning Livestock

81-8-301. Notices of security agreements. The department of livestock shall accept and file notices of security agreements, renewals, assignments, and satisfactions covering livestock owned by a person, firm, corporation, or association and bearing its recorded brand and shall list the notices on the official records of marks and brands kept by it. The department shall also list the notices in the offices of the stock inspectors employed by the department and stationed at the central livestock markets where records are kept of marks and brands. All forms on which the notices are given shall be prescribed by the department and furnished by the secured party who gives the notice. A livestock market to which livestock is shipped may not be held liable to any secured party for the proceeds of livestock sold through the livestock market by the debtor unless notice of the security agreement is filed as hereinbefore provided.

History: En. Sec. 1, Ch. 91, L. 1935; re-en. Sec. 3308.1, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1949; amd. Sec. 11-138, Ch. 264, L. 1963; amd. Sec. 191, Ch. 310, L. 1974; R.C.M. 1947, 52-319.

81-8-302. Contents of notices. The notices shall consist of a statement showing the date of security agreement, the names and addresses of the debtors and secured parties or holders and owners thereof, a description of the livestock covered by the security agreement, and in case of notice of renewal, the date of renewal and, in the case of a notice of assignment of a security interest, the date of the assignment and a description of the security agreement to which the assignment is made and the parties to the assignment and any additional information which is required by the department of livestock.

History: En. Sec. 2, Ch. 91, L. 1935; re-en. Sec. 3308.2, R.C.M. 1935; amd. Sec. 11-139, Ch. 264, L. 1963; amd. Sec. 192, Ch. 310, L. 1974; R.C.M. 1947, 52-320.

81-8-303. Duty of secured parties to file satisfactions of security agreements. The secured parties, who filed notices of security agreements, renewals, and assignments with the department of livestock, as provided for in this part, shall file notices of satisfaction of the security agreements with the department immediately upon the satisfaction of the security agreement.

History: En. Sec. 3, Ch. 91, L. 1935; re-en. Sec. 3308.3, R.C.M. 1935; amd. Sec. 11-140, Ch. 264, L. 1963; amd. Sec. 193, Ch. 310, L. 1974; R.C.M. 1947, 52-321.

81-8-304. Fees. The department of livestock shall charge a fee for filing and listing the notices of security agreements for each recorded brand listed in each security agreement and for filing and listing each notice of satisfaction, renewal, or assignment of the security agreement for each recorded brand listed. The fees shall be set by rules adopted pursuant to the Montana Administrative Procedure Act, upon the basis of actual cost to the department not to exceed $15 for each brand listed. All fees shall be paid into the earmarked revenue fund for the use of the department.

History: En. Sec. 4, Ch. 91, L. 1935; re-en. Sec. 3308.4, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1953; amd. Sec. 96, Ch. 147, L. 1963; amd. Sec. 11-141, Ch. 264, L. 1963; amd. Sec. 1, Ch. 12, L. 1969; amd. Sec. 194, Ch. 310, L. 1974; amd. Sec. 1, Ch. 11, L. 1977; R.C.M. 1947, 52-322.

81-8-305. Department of livestock not responsible for collection or payment of money under security agreements. The department of livestock, its agents and employees, are not responsible or liable to either debtor or secured party for the collection or payment of any money due the holder of any security agreement covering livestock or renewals, satisfactions, or assignments thereof as provided in this part, if this part is carried out in good faith.

History: En. Sec. 5, Ch. 91, L. 1935; re-en. Sec. 3308.5, R.C.M. 1935; amd. Sec. 11-142, Ch. 264, L. 1963; amd. Sec. 195, Ch. 310, L. 1974; R.C.M. 1947, 52-323.

81-8-306 through 81-8-310 reserved.

81-8-311. Range stock — taking possession under process. Whenever it is necessary for an officer or person charged with the service of process out of any of the courts of this state to take possession of any cattle or horses running at large and commonly known as range stock, between November 1 and the next succeeding May 15, it is a sufficient service of such process for the officer or person within 15 days after receiving the process for service to file a copy thereof with the county clerk of the county wherein such property is running at large, with a notice appended thereto stating the number as near as may be and a description of the stock by marks and brands, and stating that such property or a portion thereof, as the case may be, is attached or levied upon in pursuance of such process. Such officer or person shall make due return of the service of process.

History: En. Sec. 1, p. 111, L. 1885; re-en. Sec. 223, 1st Div. Comp. Stat. 1887; re-en. Sec. 940, C. Civ. Proc. 1895; re-en. Sec. 6693, Rev. C. 1907; re-en. Sec. 9296, R.C.M. 1921; re-en. Sec. 9296, R.C.M. 1935; R.C.M. 1947, 93-4343; amd. Sec. 9, Ch. 14, L. 1979.

81-8-312. Possession under a mortgage — how acquired. In all cases where it is necessary under the laws of this state for a party to any mortgage, assignment, bill of sale, or other contract, between November 1 and the next succeeding May 15, to take possession of any such cattle or horses in order to preserve his rights under any such mortgage, assignment, bill of sale, or other contract, it is sufficient for such party to file a copy of the instrument under which he claims, with a notice of such claim appended thereto, with the general recorder of marks and brands within 5 days after it becomes necessary for him to so take custody and possession of the same.

History: En. Sec. 2, p. 111, L. 1885; re-en. Sec. 224, 1st Div. Comp. Stat. 1887; re-en. Sec. 941, C. Civ. Proc. 1895; re-en. Sec. 6694, Rev. C. 1907; re-en. Sec. 9297, R.C.M. 1921; re-en. Sec. 9297, R.C.M. 1935; amd. Sec. 11-163, Ch. 264, L. 1963; R.C.M. 1947, 93-4344.

81-8-313. Limitation of period of possession. When the copy of the process or instrument, with the proper notice appended thereto, is filed as hereinbefore provided, it has the same effect as if actual possession of said cattle and horses had been taken by the officer or person charged with the execution of such process, or the party required under said instrument to take the same, and shall continue to have such effect until actual possession of such property has been taken or had by the officer, person, or party aforesaid; provided, that such actual possession be had or taken prior to August 1 next succeeding.

History: En. Sec. 3, p. 112, L. 1885; re-en. Sec. 225, 1st Div. Comp. Stat. 1887; re-en. Sec. 942, C. Civ. Proc. 1895; re-en. Sec. 6695, Rev. C. 1907; re-en. Sec. 9298, R.C.M. 1921; re-en. Sec. 9298, R.C.M. 1935; R.C.M. 1947, 93-4345.

81-8-314. Duty of county clerk and recorder of marks and brands to record papers. It is the duty of the county clerk and of the general recorder of marks and brands to file all papers deposited with them for that purpose, and required to be filed under the provisions of 81-8-311 through 81-8-313, and preserve the same as other records of their offices are preserved, and furnish to persons making inquiry about such files all necessary information concerning the same.

History: En. Sec. 4, p. 112, L. 1885; re-en. Sec. 226, 1st Div. Comp. Stat. 1887; re-en. Sec. 943, C. Civ. Proc. 1895; re-en. Sec. 6696, Rev. C. 1907; re-en. Sec. 9299, R.C.M. 1921; re-en. Sec. 9299, R.C.M. 1935; amd. Sec. 11-164, Ch. 264, L. 1963; R.C.M. 1947, 93-4346.

81-8-315. Sale of property under supplementary writ. When an officer into whose hands a writ of execution is placed has served the same in accordance with 81-8-311, and made his return in accordance with the facts, at any time thereafter, within the time limited as hereinbefore provided to hold the property taken or levied upon under such writ, another writ of execution may be issued, which must be supplementary to the first writ, and in pursuance of which the officer or person charged with the service thereof may sell the property held by the said first writ, as hereinbefore provided.

History: En. Sec. 5, p. 113, L. 1885; re-en. Sec. 227, 1st Div. Comp. Stat. 1887; re-en. Sec. 944, C. Civ. Proc. 1895; re-en. Sec. 6697, Rev. C. 1907; re-en. Sec. 9300, R.C.M. 1921; re-en. Sec. 9300, R.C.M. 1935; R.C.M. 1947, 93-4347.

Part 4

Sale of Baby Animals

81-8-401. Certain dealings in baby animals unlawful. (1) It is unlawful for any person, firm, or corporation other than a hatchery, feed store, or breeder of fowl or rabbits to:

(a) sell, offer for sale, barter, or give away for commercial purposes baby chickens, ducklings, or other fowl, under 3 weeks of age, or rabbits under 2 months of age, as pets, toys, premiums, or novelties;

(b) color, dye, stain, or otherwise change the natural color of baby chickens, ducklings, or other fowl or rabbits; or

(c) bring or transport the same into the state.

(2) This section shall not be construed to prohibit the sale, dyeing, staining, or otherwise changing of the natural color, or display of such baby chickens, ducklings, or other fowl or such rabbits in proper facilities by breeders or stores engaged in the business of selling for purposes of avicultural breeding and raising.

History: En. 3-2110 by Sec. 1, Ch. 233, L. 1974; R.C.M. 1947, 3-2110.

81-8-402. Penalties. Violation of 81-8-401 is a misdemeanor and any person, firm, or corporation, other than a hatchery, feed store, or breeder of fowl or rabbits, violating any of the provisions thereof is, upon conviction, subject to a fine not exceeding the sum of $100 or imprisonment for a period not exceeding 30 days, or both.

History: En. 3-2111 by Sec. 2, Ch. 233, L. 1974; R.C.M. 1947, 3-2111.

Part 5

Sale of Registered Livestock

81-8-501. Sale of animals under false registration certificates — changing markings — auctioneer. (1) No person, company, or corporation shall:

(a) sell to another person or persons any animal with a certificate of registration or breeding that does not belong to said animal;

(b) change in any way the certificate of registration or breeding of any animal;

(c) falsely represent any production record of any cow or of any dam specified in any registration certificate;

(d) change the markings of any animal with the intent to deceive the purchaser.

(2) This section shall not apply to any auctioneer or agent acting in good faith under the direction of the owner.

History: En. Sec. 5, Ch. 6, L. 1913; re-en. Sec. 3355, R.C.M. 1921; amd. Sec. 1, Ch. 68, L. 1933; re-en. Sec. 3355, R.C.M. 1935; R.C.M. 1947, 46-1205.

81-8-502. Penalty. Any person, persons, company, or corporation violating 81-8-501 shall be punished by a fine of not less than $25 or more than $500 or by imprisonment of not less than 10 days or more than 6 months or by both fine and imprisonment.

History: En. Sec. 6, Ch. 6, L. 1913; re-en. Sec. 3356, R.C.M. 1921; re-en. Sec. 3356, R.C.M. 1935; R.C.M. 1947, 46-1206.

81-8-503. Expenditures for purebred livestock shows and sales. The boards of county commissioners of the several counties of the state of Montana may and they are hereby authorized to expend annually from the general fund of the county, not to exceed a sum equal to a levy of one-fourth mill on the taxable property of the county, for the purpose of conducting special purebred livestock shows and special purebred livestock sales within the county.

History: En. Sec. 1, Ch. 60, L. 1945; R.C.M. 1947, 46-2201.

81-8-504. Tax levy authorized. For the purpose of defraying the costs of such purebred livestock shows and such purebred livestock sales, the county commissioners are authorized and empowered to levy annually a tax not to exceed one-fourth mill on the taxable property of the county, in excess of the amount levied for county purposes, which taxes shall be paid into the general fund of the county.

History: En. Sec. 2, Ch. 60, L. 1945; R.C.M. 1947, 46-2202.

Part 6

Pork Research and Marketing

81-8-601. Short title. This part may be cited as the "Montana Pork Research and Marketing Act".

History: En. 46-3101 by Sec. 1, Ch. 484, L. 1975; R.C.M. 1947, 46-3101.

81-8-602. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Committee" means the Montana pork research and marketing committee provided for in 2-15-3103.

(2) "Producer" means anyone actively engaged in the production of swine and includes a person, partnership, association, corporation, cooperative, trust, and any and all business units, devices, and arrangements.

(3) "Purchaser" means any licensed or bonded livestock dealer or livestock market in the state of Montana.

History: En. 46-3102 by Sec. 2, Ch. 484, L. 1975; R.C.M. 1947, 46-3102.

81-8-603. Compensation. Members of the committee shall receive no salary but shall be paid from the committee account a per diem of $20 for each day they are actually and necessarily engaged in the transaction of official business under this part.

History: En. 46-3103 by Sec. 4, Ch. 484, L. 1975; R.C.M. 1947, 46-3103.

81-8-604. Removal from office — cause — procedure. Any member of the committee shall be removable by the governor for malfeasance, misfeasance, or neglect of duty. Any member of the committee shall automatically be disqualified from continuing as a member when he ceases to:

(1) be a resident of the state of Montana;
(2) live in the district from which he was appointed; or
(3) be actually engaged in producing swine in said state or district.

History: En. 46-3104 by Sec. 5, Ch. 484, L. 1975; R.C.M. 1947, 46-3104.

81-8-605. Election of chairman — time of meetings. At the first meeting of the committee, it shall elect a chairman from among its members. The committee shall meet at least once every 6 months and at such other times as called by the chairman or by any two members of committee.

History: En. 46-3105 by Sec. 6, Ch. 484, L. 1975; R.C.M. 1947, 46-3105.

81-8-606. Powers of committee. (1) The committee shall have the power to:

(a) adopt rules necessary for the administration of this part;
(b) provide, through the department, for the enforcement of this part;
(c) conduct adequate, intensive, and timely research into the promotion, marketing, production, and uses of pork in all phases and relationships;
(d) enter into written contracts or agreements with recognized agencies, public or private, within or without the state of Montana, for the purpose of, but not limited to, improving pork quality, increasing the efficiency of production, developing marketing knowledge, developing markets, and promoting pork and pork products.

(2) None of the duties, authorities, and powers set forth in this part and delegated to the committee shall be construed to mean or permit participation in state or federal political action.

History: En. 46-3106 by Sec. 7, Ch. 484, L. 1975; R.C.M. 1947, 46-3106.

81-8-607. Assessments. There is hereby assessed a per head levy of 10 cents on all swine sold by producers to purchasers beginning July 1, 1975. The assessment shall be deducted and collected at the time of sale from the producer's receipt of sale and remitted to department of livestock by purchaser under the provisions of this part.

History: En. 46-3107 by Sec. 8, Ch. 484, L. 1975; R.C.M. 1947, 46-3107.

81-8-608. Purchaser's delivery of invoice to producers — form — filing of sworn statement — payment of assessment. (1) The purchaser of swine at the time of settlement shall make and deliver invoices for each purchase to the producer. Such invoices shall show:

(a) the name and address of the producer and purchaser;
(b) the number of swine sold;

(c) the date of the purchase and the amount of assessment collected and remitted to the department of livestock.

(2) The purchaser shall deliver to and have on file with the department on forms prescribed by the committee by the 20th day of each calendar month following any calendar month in which purchaser shall purchase swine of a producer, beginning on August 20, 1975, a sworn statement of the number of swine purchased in Montana during the preceding calendar month. At the time the sworn statement is filed, the purchaser shall pay and remit to the department the assessment provided for in this part for deposit in the swine research and marketing account.

(3) The statement referred to in subsections (1) and (2) of this section shall be legibly written and shall be entirely free of any corrections or erasures on the face thereof. Any person who shall alter any part of any statement shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as is provided herein.

(4) Any time after 30 days from the deduction of the assessment and before the expiration of 90 days following such deduction by the purchaser, the producer may, upon the submission of a written, verified request therefor to the committee through the department, obtain a refund in the amount of the assessment deducted by said purchaser. The request shall be accompanied by the original invoices received by the producer at the time of settlement. The pork research and marketing committee shall keep complete records of all refunds made under the provisions of this part. All original invoices shall be returned to the producer with the refund payments.

History: **En. 46-3108 by Sec. 9, Ch. 484, L. 1975; R.C.M. 1947, 46-3108.**

81-8-609. Receipt of gifts, grants, or donations for research purposes. The department of livestock may receive gifts, grants, or donations for any research or scientific inquiries conducted under authority of this part and use and expend the same in compliance with the conditions, if any, of such grants, gifts, and donations if such conditions are valid under the laws of Montana and in aid of the purposes of this part.

History: **En. 46-3109 by Sec. 10, Ch. 484, L. 1975; R.C.M. 1947, 46-3109; amd. Sec. 10, Ch. 14, L. 1979.**

81-8-610. Research and marketing account — sources — use — expenditures. (1) The proceeds of all assessments made, paid, and collected under this part and the proceeds from all gifts, grants, or donations to the department of livestock for research authorized by this part shall be deposited in the federal and private revenue fund for the use of the committee as provided in this part.

(2) The account shall be maintained for the purposes of this part and shall be separate and apart from all other accounts of the department.

(3) Ten percent of all unrefunded assessments shall be paid to the national meat board.

(4) Ten percent of all unrefunded assessments shall be paid to the national pork producer council.

(5) The committee may be assessed costs by the department only for those services requested by the committee.

History: **En. 46-3110 by Sec. 11, Ch. 484, L. 1975; R.C.M. 1947, 46-3110.**

81-8-611. Contracts for carrying out research, promotion, and marketing of swine. The Montana pork research and marketing committee shall not set up research units or agencies of its own but shall cooperate and is hereby empowered to enter into contracts with other lawful and proper local, state, or national organizations, public or private, in carrying out all phases of research and marketing contemplated by this part.

History: En. 46-3111 by Sec. 12, Ch. 484, L. 1975; R.C.M. 1947, 46-3111.

81-8-612. Violation — penalty. Any person violating any of the provisions of this part shall be guilty of a misdemeanor and shall, upon conviction, be fined not less than $25 or more than $500.

History: En. 46-3112 by Sec. 13, Ch. 484, L. 1975; R.C.M. 1947, 46-3112.

81-8-613. Duration — expiration — reversion of remaining funds. This part shall be in full force and effect from July 1, 1975, for a period of 7 years. If this part is not renewed through legislative action to extend beyond 7 years, any money remaining that has been collected under this part shall revert to Montana state university to be used exclusively for swine research.

History: En. 46-3113 by Sec. 14, Ch. 484, L. 1975; R.C.M. 1947, 46-3113.

Part 7

Quality Label

81-8-701. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Agricultural and food product" includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

(2) "Continuous official inspection" means that an employee or a licensed representative of the department of agriculture or the department of livestock or the United States department of agriculture regularly and continuously examines the commodity as it is being packed so as to have knowledge of the quality that goes into each package.

(3) "Person" includes an individual, partnership, association, union, or corporation.

History: En. Sec. 5, Ch. 290, L. 1947; amd. Sec. 43, Ch. 310, L. 1974; R.C.M. 1947, 3-2505.

81-8-702. Montana quality label. The department of livestock may make use of an outline map of the state of Montana and the word "Montana", printed, lithographed, inscribed, engraved, or otherwise impressed on the labels, tags, seals, or containers of agricultural or food products, by a person who has availed himself of the continuous official inspection service offered by the department of livestock, as an indication that the product has been inspected by the officers, agents, or licensed inspectors of the department and that the products are of the quality and description as indicated on the label, tag, seal, or container. The outline map with the word "Montana", when made use of under this part, shall be known as the "Montana quality label". When an authorized department, agent, or officer of the

United States collaborates with the department of livestock in the inspection of a product, the Montana quality label may, with the consent of the appropriate department, agency, or officer of the United States, be superimposed on an outline map of the United States on the label, tag, seal or container, indicating inspectional collaboration between the department of livestock and the department, agency, or officer of the United States.

History: En. Sec. 1, Ch. 290, L. 1947; amd. Sec. 39, Ch. 310, L. 1974; R.C.M. 1947, 3-2501.

81-8-703. Limitation on use of label. The Montana quality label may not be used except under the rules made for its use by the department of livestock, and it may not be used on the label, tag, seal, container, or product of a farm, factory, mill, or other producing, processing, packing, preparing, or dressing establishment unless the product is produced, processed, packed, prepared, or dressed under continuous official inspection.

History: En. Sec. 2, Ch. 290, L. 1947; amd. Sec. 40, Ch. 310, L. 1974; R.C.M. 1947, 3-2502.

81-8-704. Procurement and use of labels — information concerning — disposal of moneys. The department of livestock may make, print, or otherwise prepare a quantity of labels, tags, and seals with the Montana quality label printed, lithographed, inscribed, engraved, or impressed on them, sufficient to supply the demand for them. The department may furnish labels, tags, and seals at reasonable prices to a producer, processor, packer, or dresser who has availed himself of the continuous official inspection service. This part, however, does not preclude the department from permitting, under its rules, a producer, processor, packer, or dresser to make, prepare, or cause to be made or prepared the labels, tags, or seals to be used on his own product or to print, stamp, or otherwise place or cause to be placed the Montana quality label on products or containers which have been subject to continuous inspection, if the labels, tags, seals, stamps, or other devices are of a design which the department prescribes. The department of livestock may, in cooperation with the United States department of agriculture or otherwise, make use of available and appropriate means to disseminate information concerning the Montana quality label and the products which may lawfully bear it and to popularize its use. All moneys derived from furnishing the labels, tags, and seals or from permitting the use of the Montana quality label shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 3, Ch. 290, L. 1947; amd. Sec. 44, Ch. 147, L. 1963; amd. Sec. 41, Ch. 310, L. 1974; R.C.M. 1947, 3-2503.

81-8-705. Wrongful use of label — penalty — injunction — prosecutions. (1) A person who uses the Montana quality label in violation of this part, or who, with the intent to mislead or deceive, uses an imitation, counterfeit, or likeness thereof on the label, tag, seal, container, sign, or otherwise on any product which is sold or offered for sale or who uses the Montana quality label or, with intent to mislead or deceive, uses an imitation, counterfeit, or likeness thereof on or in connection with an offer to sell or advertisement for the sale or use of any product which does not in fact lawfully bear the Montana quality label is guilty of a misdemeanor and shall be fined not less than $10 or more than $500.

(2) The word "Montana" may not be used on a brand or label not of No. 1 quality, its equivalent, or better.

(3) A district court in this state has jurisdiction to enjoin the use of the Montana quality label or an imitation, counterfeit, or likeness thereof used in violation of this part.

(4) The department of livestock may cause prosecutions for violations of this part, as well as the injunction proceedings under this section, to be instituted through the attorneys for the state or the counties and cities or otherwise in its discretion.

History: **En. Sec. 4, Ch. 290, L. 1947; amd. Sec. 42, Ch. 310, L. 1974; R.C.M. 1947, 3-2504.**

CHAPTER 9

SLAUGHTER

Part 1 — Butchers and Meat Peddlers

Section

81-9-101. Definitions.
81-9-102. Butchers' and meat peddlers' licenses — amount of fees — disposition of moneys — penalty for failure to display license — exception for personal use.
81-9-103. Forfeiture of license for violations.
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81-9-111. Hide certificates — inspection of hides before disposal — person slaughtering cattle to exhibit hides.
81-9-112. Inspection and marking of hides and meat of slaughtered cattle — records — bill of sale — when inspection not necessary.
81-9-113. Fees for inspection.
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Part 1

Butchers and Meat Peddlers

81-9-101. Definitions. As used in this part, the following definitions apply:

(1) "Butcher" means a person, firm, corporation, or association that slaughters livestock for the purpose of selling or distributing meat or byproducts of livestock and maintains slaughterhouses for this purpose; a person who maintains a meat market for the purpose of selling or distributing meat or byproducts of livestock; or a person who maintains a slaughterhouse, meat depot, or packing plant for the purpose of engaging in custom slaughter of livestock.

(2) "Custom slaughter" means the butchering for a consideration of livestock owned by someone else on behalf of the owner in which there has not been a sale of the meat.

(3) "Deputy state stock inspector" means a person designated by the department as a deputy state stock inspector and who does not receive salary or compensation from the department.

(4) "Livestock" means cattle, horses, sheep, swine, goats, mules, or asses.

(5) "Meat peddler" means a person, firm, corporation, or association that slaughters livestock, buys and sells any dressed livestock, or engages in custom slaughter or packing but does not maintain a licensed slaughterhouse or meat market.

(6) "State stock inspector" means an employee of the department of livestock designated by the department as a state stock inspector.

History: En. Sec. 1, Ch. 172, L. 1931; re-en. Sec. 3298.16, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1943; amd. Sec. 86, Ch. 310, L. 1974; R.C.M. 1947, 46-501; amd. Sec. 1, Ch. 234, L. 1979.

81-9-102. Butchers' and meat peddlers' licenses — amount of fees — disposition of moneys — penalty for failure to display license — exception for personal use. (1) Every butcher shall, before engaging in or conducting any market or business as such in any county, pay to the county treasurer of such county a license fee of $5 for each such market or business so engaged in or conducted within the county, which license shall continue in force and effect for the balance of the calendar year in which it was issued and which shall be deemed null and void after January 1 of the succeeding year.

(2) Every meat peddler shall, before commencing or doing any business or performing any acts in any county as such meat peddler, pay to the county treasurer of such county a license fee of $100, which shall continue in force and effect for the balance of the calendar year in which it is issued and shall be deemed null and void after January 1 of the succeeding year.

(3) It shall be the duty of every meat peddler to have his license with him at all times when transacting business, and it shall be the duty of every butcher to display his license in a conspicuous place in his market. Failure to have such license shall be deemed a misdemeanor.

(4) The county treasurers of the state are hereby authorized and required, upon the payment of such licenses, to issue a proper certificate of such payment. The moneys collected from such licenses shall be placed in the general fund of the county wherein collected.

(5) This section shall not apply to the slaughter of meat by any person, firm, corporation, or association which may slaughter or cause to be slaughtered any neat cattle of his or its own breeding or to the sale of slaughtered cattle of his or its own breeding; provided any person who shall sell the equivalent of more than 25 carcasses, beef and/or veal, in any one year shall take out a license as herein provided for.

(6) Any person who kills beef or veal in good faith for his own use shall not be required to procure any license provided for in this section.

History: (1) thru (5)En. Sec. 2, Ch. 172, L. 1931; re-en. Sec. 3298.17, R.C.M. 1935; amd. Sec. 2, Ch. 42, L. 1943; Sec. 46-502, R.C.M. 1947; (6)En. Sec. 3, Ch. 172, L. 1931; re-en. Sec. 3298.18, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1941; amd. Sec. 1, Ch. 67, L. 1959; Sec. 46-504, R.C.M. 1947; R.C.M. 1947, 46-502, 46-504(part).

81-9-103. Forfeiture of license for violations. In addition to the penalties provided by 81-9-118, any butcher, meat peddler, or any other person as defined by this part who shall violate any of the terms of this part shall suffer a forfeiture of the license required by this part, and no license shall again be issued to such person until the expiration of 1 year from the date of such conviction.

History: En. Sec. 8, Ch. 172, L. 1931; re-en. Sec. 3298.23, R.C.M. 1935; R.C.M. 1947, 46-512.

81-9-104 through 81-9-110 reserved.

81-9-111. Hide certificates — inspection of hides before disposal — person slaughtering cattle to exhibit hides. (1) Every person or persons, firm, corporation, or association slaughtering cattle for its own use must before selling, destroying, or otherwise disposing of the hide or hides from such cattle have the same inspected by an officer authorized to make such inspection and secure a certificate of inspection as hereinprovided for.

(2) It shall be unlawful for any person or persons, firm, corporation, or association to sell, offer for sale, destroy, or otherwise dispose of any hide or

hides from slaughtered cattle which have not been inspected and identified by an authorized inspector.

(3) It shall be the duty of any person or persons, firm, corporation, or association slaughtering cattle, for his own use or otherwise, upon demand of an authorized inspector, to exhibit the hide or hides of such animal or animals for inspection or certificate issued by a hide buyer or some evidence of inspection by an authorized inspector.

History: En. Sec. 4, Ch. 172, L. 1931; re-en. Sec. 3298.19, R.C.M. 1935; amd. Sec. 1, Ch. 47, L. 1939; amd. Sec. 2, Ch. 37, L. 1961; R.C.M. 1947, 46-508.

81-9-112. Inspection and marking of hides and meat of slaughtered cattle — records — bill of sale — when inspection not necessary. (1) All butchers and meat peddlers shall maintain the hide of an animal in its entirety with tail and ears attached for each animal slaughtered until inspected by a state or deputy state stock inspector in the county where the animal was slaughtered. The inspector shall mark the hide in the manner prescribed by the department. This inspection may be waived for those animals inspected by a state or deputy state stock inspector on a preslaughter inspection.

(2) Each dressed carcass of such animal shall be stamped with an ink stamp in a manner specified by the department. The inspector shall keep a record and issue a certificate of inspection as specified by the department giving the butcher's or peddler's name, the place of business, the serial number of the inspection of the hide, the brand on the hide, the date of inspection, and the place where the inspection was made. The inspector shall forward a copy of the inspection certificate to the department and issue one copy to the person requesting the inspection.

(3) When ownership of the carcass and hide presented is claimed on a bill of sale, the officer making the inspection shall demand and receive the original bill of sale, which shall be attached to the inspector's certificate sent to the county clerk and recorder. When the bills of sale cover cattle not included in the inspection, the inspector shall issue to the owner of the bill of sale a receipt for the bill of sale. The receipt shall describe the balance of the cattle covered by the original bill of sale.

(4) Any person who kills beef or veal in good faith for his own use shall not be required to have such meat inspected or stamped.

History: (1) thru (6)En. Sec. 3, Ch. 172, L. 1931; re-en. Sec. 3298.18, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1941; amd. Sec. 1, Ch. 37, L. 1961; amd. Sec. 87, Ch. 310, L. 1974; Sec. 46-503, R.C.M. 1947; (7)En. Sec. 3, Ch. 172, L. 1931; re-en. Sec. 3298.18, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1941; amd. Sec. 1, Ch. 67, L. 1959; Sec. 46-504, R.C.M. 1947; R.C.M. 1947, 46-503, 46-504(part); amd. Sec. 2, Ch. 234, L. 1979.

81-9-113. Fees for inspection. The state or deputy state stock inspector making the inspection required by 81-9-112 shall collect 25 cents a head plus all necessary expenses. State stock inspectors shall promptly remit all fees and expenses collected under this section to the department for deposit in the earmarked revenue fund. Deputy state stock inspectors shall keep their fees and expenses.

History: (1)En. Sec. 2, Ch. 78, L. 1941; Sec. 46-505, R.C.M. 1947; (2)En. Sec. 3, Ch. 78, L. 1941; amd. Sec. 88, Ch. 310, L. 1974; Sec. 46-506, R.C.M. 1947; R.C.M. 1947, 46-505, 46-506; amd. Sec. 3, Ch. 234, L. 1979.

81-9-114. Duty of butchers and meat peddlers to report violations. It is made the duty of any butcher or meat peddler licensed under the provisions of 81-9-102 to report any violation of 81-9-112 to the sheriff of the county wherein such violation shall occur and of which such butcher or meat peddler has knowledge, and for his failure so to do, such butcher or meat peddler shall suffer a revocation of his license and no license shall again be issued to such person until the expiration of 1 year from the date of such revocation.

History: En. Sec. 4, Ch. 78, L. 1941; R.C.M. 1947, 46-507.

81-9-115. Unlawful to purchase uninspected hide or carcass — exception. It shall be unlawful for any person or persons, firm, corporation, or association to purchase the hide or carcass or any part thereof of any beef or veal without the inspection or identification herein provided for. The provision of this section shall not apply to any person or persons who shall purchase from a licensed butcher or peddler beef or veal in quantities less than one quarter of an animal.

History: En. Sec. 5, Ch. 172, L. 1931; re-en. Sec. 3298.20, R.C.M. 1935; R.C.M. 1947, 46-509.

81-9-116. Officers' authority concerning enforcement — seizure and sale of meat held in violation. Any officer having authority to make the inspection herein provided for may enter into and inspect butcher shops, slaughterhouses, and other places of business of meat peddlers and butchers or places where beef is handled in quantities, for the purpose of determining whether the provisions of this part have been complied with. In case meat is found which is being held in violation of the provisions of this part, the officers shall have authority to seize and take the same. All meat so seized shall be sold under the direction of a stock inspector, sheriff, or other officer authorized, at either public or private sale, for the best price obtainable, and the proceeds shall be paid to the county treasurer of the county in which said meat is seized for the benefit of the general fund of said county.

History: En. Sec. 6, Ch. 172, L. 1931; re-en. Sec. 3298.21, R.C.M. 1935; R.C.M. 1947, 46-510.

81-9-117. Transportation of uninspected meat unlawful. It shall be unlawful and a misdemeanor for any person to transport by a motor truck or other vehicle or have in his possession for the purpose of sale any meat which has not been inspected and stamped as required by the provisions of this part, and any officer authorized shall have the right to seize and sell the same as hereinbefore provided; provided, however, that this shall not apply to meat being transported or held for the purpose of inspection and stamping as provided for in this part.

History: En. Sec. 7, Ch. 172, L. 1931; re-en. Sec. 3298.22, R.C.M. 1935; R.C.M. 1947, 46-511.

81-9-118. Penalties for violation or falsifying records. Any person who violates any of the provisions of this part or who willfully falsifies any of the records required by this part to be kept shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for a period of not less than 30 days or more than 6 months or by such fine and imprisonment for the first offense and for each subsequent offense shall be deemed guilty of a felony and punished by imprisonment in the state prison for not less than 1 year or more than 5 years.

History: En. Sec. 9, Ch. 172, L. 1931; re-en. Sec. 3298.24, R.C.M. 1935; R.C.M. 1947, 46-513.

Part 2

Slaughterhouses

81-9-201. Slaughterhouse license — fees and renewals. It is unlawful for a person, firm, or corporation to maintain or conduct a slaughterhouse, meat packinghouse, or meat depot in this state without having a license issued by the department. The annual fee for a license issued under this section is $1 and shall be paid into the general fund. All licenses expire on December 31 of the year in which they are issued and shall be renewed by the department on request of the licensee. However, when the department finds that the place for which the license is issued is not conducted in accordance with the rules and orders of the board made under 81-2-102, the department shall revoke the license and may not renew it until the place is in a sanitary condition in accordance with department rules.

History: En. Sec. 26, Ch. 262, L. 1921; re-en. Sec. 3285, R.C.M. 1921; re-en. Sec. 3285, R.C.M. 1935; amd. Sec. 79, Ch. 310, L. 1974; amd. Sec. 22, Ch. 12, L. 1977; R.C.M. 1947, 46-235.

81-9-202. Exceptions of certain producers of meats. The owners or operators of slaughterhouses, packinghouses, meat depots, or other places of business engaged in the production, storage, or transportation of meats or meat foods are not required to procure a license from the department of health and environmental sciences, insofar as the business of production, storage, or transportation of these food products is concerned. This section does not limit the supervision or regulation of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale thereat by the department of health and environmental sciences, nor does this section limit the duties imposed by law on the department of health and environmental sciences to make sanitary rules for the eradication or control of an epidemic of human disease which may exist in a community.

History: En. Sec. 24, Ch. 262, L. 1921; re-en. Sec. 3283, R.C.M. 1921; re-en. Sec. 3283, R.C.M. 1935; amd. Sec. 77, Ch. 310, L. 1974; amd. Sec. 20, Ch. 12, L. 1977; R.C.M. 1947, 46-233(part).

81-9-203. Sale of carcasses unsanitarily slaughtered or handled. (1) It is unlawful for a person, firm, or corporation to sell as food for human beings, or to possess as human food intended for sale, the carcass or part of carcass of an animal slaughtered under unsanitary conditions or which carcass or part of carcass has been prepared, handled, or kept under unsanitary conditions. The department shall see that this section is enforced.

(2) It shall be unlawful for any person, persons, firm, or corporation to sell within this state or to have within his or their possession with the intent to sell within this state for human food the carcass or parts of the carcass of any animal which has been slaughtered, prepared, handled, or kept under unsanitary conditions.

(3) Unsanitary conditions shall be deemed to exist whenever and wherever any one or more of the following conditions are found to appear, to wit:

(a) if the slaughterhouse is dilapidated or in a state of decay;

(b) if the floor or side walls are soaked with decaying blood or other animal matter;

(c) if efficient fly screens are not provided;

(d) if the drainage of the slaughterhouse yard is not efficient;

(e) if maggots or filthy pools or hog wallows exist in the slaughterhouse yard or under the slaughterhouse floor;

(f) if the water supply used in connection with the cleaning and preparing of the meat is not pure and uncontaminated;

(g) if the hogs are kept in the slaughterhouse yard, or fed therein on animal offal;

(h) if the odors of putrification plainly exist in or about the slaughterhouse;

(i) if carcasses or parts of carcasses are transported from place to place when not covered with clean white cloths, or if kept in unclean or bad smelling refrigerator or refrigerators, or if kept in unclean or foul smelling storerooms.

(4) It shall be unlawful for any person, persons, firm, or corporation to have in his or their possession with intent to sell the carcass of any animal or fowl which has died from any cause other than being slaughtered in a sanitary manner, or the carcass or part of the carcass of any animal that shows evidence of any disease, or that came from a sick or diseased animal, or the carcass or part of the carcass of any calf that was killed before it had attained the age of 4 weeks.

History: **(1)En. Sec. 10, Ch. 262, L. 1921; re-en. Sec. 3269, R.C.M. 1921; re-en. Sec. 3269, R.C.M. 1935; amd. Sec. 62, Ch. 310, L. 1974; Sec. 46-216, R.C.M. 1947; (2) thru (4)En. Sec. 7, Ch. 130, L. 1911; re-en. Sec. 2584, R.C.M. 1921; re-en. Sec. 2584, R.C.M. 1935; Sec. 27-107, R.C.M. 1947; R.C.M. 1947, 27-107, 46-216.**

81-9-204. Sale of diseased carcasses without inspection forbidden. It is unlawful for a person to sell or offer for sale the carcass or any part of the carcass of an animal having actinomycosis (big jaw), tuberculosis, or any other infectious or contagious disease unless it has been inspected and passed by a representative of the department of livestock or the United States department of agriculture.

History: **En. Sec. 1, p. 163, L. 1901; re-en. Sec. 8492, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1917; re-en. Sec. 11243, R.C.M. 1921; re-en. Sec. 11243, R.C.M. 1935; Sec. 94-35-172, R.C.M. 1947; redes. 46-247 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 199, Ch. 310, L. 1974; R.C.M. 1974, 46-247.**

81-9-205. Injunctive remedies. The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating the provisions of this part or rules adopted under 81-2-102, notwithstanding the existence of other remedies at law. When the application of other remedies has been insufficient to compel action to control, extirpate, or prevent the spread of disease or upon a showing that an animal disease emergency exists and that other remedies probably would be insufficient to compel action to control the emergency, the department may apply for and the court may grant mandatory injunctive relief.

History: **En. 46-210.1 by Sec. 1, Ch. 190, L. 1977; R.C.M. 1947, 46-210.1.**

81-9-206. Penalty. (1) Any person, persons, firm, or corporation violating any provision of this part, or the rule or order promulgated by authority of 81-2-102, shall be guilty of a misdemeanor. Violations of this part shall be tried without undue delay in any court of competent jurisdiction.

(2) Any person guilty of violating 81-9-204 is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $500 or by imprisonment in the county jail not exceeding 1 year or by both fine and imprisonment.

History: (1)En. Sec. 29, Ch. 262, L. 1921; re-en. Sec. 3288, R.C.M. 1921; re-en. Sec. 3288, R.C.M. 1935; amd. Sec. 23, Ch. 12, L. 1977; Sec. 46-238, R.C.M. 1947; (2)En. Sec. 2, Ch. 39, L. 1917; re-en. Sec. 11244, R.C.M. 1921; re-en. Sec. 11244, R.C.M. 1935; 94-35-173, R.C.M. 1947; redes. 46-248 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 26, Ch. 12, L. 1977; Sec. 46-248, R.C.M. 1947; R.C.M. 1947, 46-238, 46-248.

81-9-207. Civil liability. A person, firm, or corporation which violates this part or rules or orders of the department is liable for damages sustained by a person because of the violation. The damages may be recovered by the person in a civil action in a court of competent jurisdiction.

History: En. Sec. 30, Ch. 262, L. 1921; re-en. Sec. 3289, R.C.M. 1921; re-en. Sec. 3289, R.C.M. 1935; amd. Sec. 81, Ch. 310, L. 1974; amd. Sec. 24, Ch. 12, L. 1977; R.C.M. 1947, 46-239.

Part 3

Rendering or Disposal Plants

81-9-301. Licensing of rendering or disposal plants. (1) It is unlawful to operate in this state a rendering or disposal plant or establishment that is intended to be operated for the disposal of bodies or parts of bodies of animals or fowl in any manner, except for human consumption, without first securing a license from the department of livestock.

(2) The license expires on December 31 of the year in which it is issued. A license fee of $5 shall be charged for licenses issued under 81-9-301 through 81-9-306.

(3) All license fees collected shall be paid into the general fund of this state.

History: En. Sec. 1, Ch. 148, L. 1949; amd. Sec. 159, Ch. 310, L. 1974; R.C.M. 1947, 46-2401.

81-9-302. Power of department to adopt and enforce rules. The department may adopt and enforce rules or orders necessary for the supervision, control, and inspection of rendering or disposal plants or establishments, their standards and methods of operation and their sanitary conditions, and the supervision, control, and inspection of equipment of the plant, where the rendering or disposal plants or establishments are intended to be operated for the disposal of bodies or parts of bodies of dead animals or fowl in any manner, except for human consumption. Vehicles and equipment used for the transportation of these bodies or parts of bodies are subject to the rules or orders adopted by the department which are applicable to the vehicles or equipment. Sections 81-9-301 through 81-9-306 do not apply to the slaughtering and handling of animals or fowl for human consumption.

History: En. Sec. 2, Ch. 148, L. 1949; amd. Sec. 160, Ch. 310, L. 1974; R.C.M. 1947, 46-2402.

81-9-303. Power of department to restrain operation of rendering plant. (1) The department may restrain the operation of a rendering or disposal plant or establishment engaged in the collection or handling of the bodies or parts of bodies of dead animals or fowl, where the operation is carried on in violation of the laws of this state or the rules or orders of the department, after a hearing held on 5 days' written notice of the hearing to the licensee. The restraining order may be issued without notice of hearing where in the discretion of the department the violation constitutes a menace to public health requiring immediate and summary abatement.

(2) The licensee may appeal to the district court on giving written notice of appeal to the restraining authority within 10 days after service of the restraining order, whether the order is made on hearing or summarily. The written notice of appeal does not stay execution of the restraining order when the restraining order is issued without hearing to restrain a menace to public health requiring immediate and summary abatement.

(3) Where the restraining order is issued after a hearing, the hearing before the district court is on the record, together with any additional evidence offered. Where the order is issued without hearing, the hearing before the district court is on evidence offered at the hearing.

(4) Where the appeal is from an order issued after hearing, the appellant shall pay the cost of the transcript, which must be filed not more than 30 days from the date of filing the notice of appeal. However, the court may, in its discretion, extend the time for filing the transcript.

History: En. Sec. 3, Ch. 148, L. 1949; amd. Sec. 161, Ch. 310, L. 1974; R.C.M. 1947, 46-2403.

81-9-304. Power of department to revoke license of rendering plant. A license to operate a rendering or disposal plant may be revoked at any time by the department when it determines that a person to whom the license is issued has failed to comply with any statute of this state or rules or orders of the department and on hearing before the department, after 10 days' written notice. Service and filing of a notice of appeal to a district court stays execution of the order.

History: En. Sec. 4, Ch. 148, L. 1949; amd. Sec. 162, Ch. 310, L. 1974; R.C.M. 1947, 46-2404.

81-9-305. Power to administer oaths, subpoena witnesses, and receive evidence. Hearings held under 81-9-301 through 81-9-306 for either revocation of licenses or to restrain operation shall be held by the department, and the department or its agent may administer oaths, subpoena witnesses, and receive evidence in order to carry out 81-9-301 through 81-9-306.

History: En. Sec. 5, Ch. 148, L. 1949; amd. Sec. 163, Ch. 310, L. 1974; R.C.M. 1947, 46-2405.

81-9-306. Penalty for violation. Operation of a rendering or disposal plant or establishment without a license from the department or operation of a rendering or disposal plant or establishment in violation of a restraining order or after revocation of a license constitutes a misdemeanor, punishable by a fine of not less than $50 or more than $250 for each day of illegal operation.

History: En. Sec. 6, Ch. 148, L. 1949; amd. Sec. 164, Ch. 310, L. 1974; R.C.M. 1947, 46-2406.

81-9-307 through 81-9-310 reserved.

81-9-311. Dead or fallen animal rendering plants — definitions. When used in 81-9-311 through 81-9-317, the following definitions apply:

(1) "Dead or fallen animal" means the carcass or dead body of a cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal, or filly, the continued existence of which would create a public nuisance and constitute a hazard to the public health, which is not killed for human consumption and is to be salvaged for the purpose of obtaining the hide and grease or fat from the animal.

(2) "Licensed rendering plant" and "licensed renderer" mean a person, partnership, association, or corporation which is engaged in the disposal of dead or fallen animals and which is licensed by the department.

History: **En. Sec. 1, Ch. 87, L. 1949; amd. Sec. 165, Ch. 310, L. 1974; R.C.M. 1947, 46-2407.**

81-9-312. Identification tags. Licensed rendering plants shall provide themselves with serially-numbered metal identification tags of a size and design prescribed by the department and in a number series assigned by the department.

History: **En. Sec. 2, Ch. 87, L. 1949; amd. Sec. 166, Ch. 310, L. 1974; R.C.M. 1947, 46-2408.**

81-9-313. Dead or fallen animal records. (1) When a licensed renderer or his agent receives a dead or fallen animal, he shall present a dead or fallen animal record to the person, corporation, or association which has requested him to remove the dead or fallen animal. The record shall be on forms prescribed by the department and contain information the department may, by rule, require.

(2) The report shall be executed in quadruplicate. The original copy shall accompany the carcass and hide until the hide is officially inspected for marks and brands. The duplicate shall be retained by the licensed renderer for the time which the department in its discretion requires. The triplicate shall be filed within 7 days after its execution and without cost in the office of the county clerk and recorder of the county in which the animal is received by the licensed renderer or his agent. The quadruplicate shall be retained by the person, corporation, or association which requested removal of the dead or fallen animal.

History: **En. Sec. 3, Ch. 87, L. 1949; amd. Sec. 167, Ch. 310, L. 1974; R.C.M. 1947, 46-2409.**

81-9-314. Animals to be tagged. At the time of the execution of the dead or fallen animal record, provided for above, the licensed renderer or his agent who receives a dead or fallen animal shall tag such animal with one of the serially numbered identification tags provided in 81-9-312 and shall at the same time record the number of said tag in the proper space provided therefor on the dead or fallen animal record.

History: **En. Sec. 4, Ch. 87, L. 1949; R.C.M. 1947, 46-2410.**

81-9-315. Production of dead or fallen animal record on demand — animal not to be removed during transportation — investigation. (1) On demand of a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer, a licensed renderer or his agent who has received a dead or fallen animal shall produce for inspection of the officer an executed dead or fallen animal record identifying each dead or fallen animal which he is transporting when the demand is made. Failure to produce the executed dead or fallen animal record on demand constitutes a misdemeanor punishable as provided in 81-9-317.

(2) Under no circumstances may a licensed renderer or his agent endanger the public health by removing or being required to remove any dead or fallen animals from the vehicle in which they are being transported until the vehicle arrives at a licensed rendering plant where the dead or fallen animal shall be handled and disposed of in conformity with the rules of the department.

(3) If a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer has probable cause to believe the dead or fallen animals being transported by a licensed renderer or his agent were obtained by a commission of a felony, he may take the licensed renderer or his agent, as well as the vehicle, into custody and proceed with the licensed renderer or his agent to the rendering plant of the licensed renderer, where inspection of marks and brands and immediate investigation shall be made.

History: **En. Sec. 5, Ch. 87, L. 1949; amd. Sec. 168, Ch. 310, L. 1974; R.C.M. 1947, 46-2411.**

81-9-316. Disposal of hides — inspection — filing of record. When a licensed renderer or his agent disposes of the hides from dead or fallen animals, the hides shall be handled and inspected for marks and brands in conformity with part 4 of this chapter. The sheriff, deputy sheriff, person designated by the board of county commissioners, or the agent of the department who makes the inspection for marks and brands in conformity with part 4 of this chapter shall complete the original dead or fallen animal record which accompanies the hide by inserting his inspector's tag number. He shall file the completed original dead or fallen animal record without cost in the office of the county clerk and recorder, together with the duplicate certificate of inspection required to be filed under part 4 of this chapter.

History: **En. Sec. 6, Ch. 87, L. 1949; amd. Sec. 169, Ch. 310, L. 1974; amd. Sec. 55, Ch. 12, L. 1977; R.C.M. 1947, 46-2412.**

81-9-317. Penalty. Any person who violates any of the provisions of 81-9-311 through 81-9-317 or who willfully falsifies any of the records required by 81-9-311 through 81-9-317 to be kept shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $50 or more than $250 or by imprisonment in the county jail for a period of not less than 30 days or more than 90 days or by both such fine and imprisonment.

History: **En. Sec. 7, Ch. 87, L. 1949; R.C.M. 1947, 46-2413.**

Part 4

Hide Dealers

81-9-401. Definitions. (1) "Animal hide" means the hide of a bovine, equine, mule, ass, sheep, goat, or swine of any age, sex, or breed.

(2) "Hide certificate" means a certificate showing a transfer of ownership of animal hides.

(3) "Hide dealer" or "buyer" means, for the purpose of this part, every person, firm, corporation, or association engaged in the business of buying or

selling animal hides. However, licensed slaughterhouses shall not be deemed hide dealers or buyers.

(4) "Inspector" means a state stock inspector or deputy state stock inspector, as defined in 81-3-201, appointed by the department of livestock.

(5) "Seller" means a person selling or delivering animal hides for or without a pecuniary consideration.

History: (1), (2), (4), (5)En. Sec. 1, Ch. 44, L. 1961; amd. Sec. 142, Ch. 310, L. 1974; Sec. 46-1101.1, R.C.M. 1947; (3)En. Sec. 1, Ch. 151, L. 1929; re-en. Sec. 3350.7, R.C.M. 1935; amd. Sec. 1, Ch. 177, L. 1939; amd. Sec. 4, Ch. 44, L. 1961; Sec. 46-1106, R.C.M. 1947; R.C.M. 1947, 46-1101.1, 46-1106; amd. Sec. 1, Ch. 236, L. 1979.

81-9-402. Hide certificate — identification. (1) A seller of an animal hide shall obtain a hide certificate from the person receiving the hide. The department shall prescribe the form of the certificate, which shall include the marks and brands on each hide. The party receiving the hide must designate where it will be kept for 30 days following delivery. The certificate must be signed by the seller or his agent and the person receiving the hide.

(2) The original certificate shall be sent by the party receiving the hide to the department within 5 days after purchase. One copy shall be retained by the seller; and one, by the hide buyer. On reasonable notice, an inspector or other agent of the department or a peace officer may inspect the hide certificate copy of the seller or buyer.

(3) The department shall prescribe an identification tag to be affixed to each hide by the person receiving the hide when it is delivered. Hide certificates, tags, and glue shall be furnished by the department at cost to any person requiring the certificates, tags, and glue. Only those certificates, tags, and glue distributed by the department may lawfully be used under this part.

History: En. Sec. 2, Ch. 44, L. 1961; amd. Sec. 143, Ch. 310, L. 1974; amd. Sec. 45, Ch. 12, L. 1977; R.C.M. 1947, 46-1101.2; amd. Sec. 2, Ch. 236, L. 1979.

81-9-403. Seizure and sale of hides when ownership cannot be determined — disposition of proceeds. (1) A state stock inspector or other officer who has authority to make an inspection of a slaughtered beef, veal, or hide of a beef or veal may seize and hold the hide when on inspection the officer finds that the brand is so altered, obliterated, or defaced that the original brand cannot be determined by a reasonable inspection or when he finds that ownership cannot be established by the brand or by other satisfactory proof.

(2) If, within 15 days after the seizure of the hide, proof of ownership cannot be established either by brand, bill of sale, or otherwise, the officer may sell the hide at the best available price and remit the proceeds, less the cost of processing, storing, and selling, to the department together with a full report of his investigation. The report shall contain a statement of the reason for the seizure and sale together with any tendered proof of ownership of any party. The proceeds shall be deposited by the department with the state treasurer and credited to the stock estray fund, where it shall be subject to claim by a party showing proper proof of ownership in the same manner as provided in 81-4-605.

History: En. Sec. 1, Ch. 113, L. 1961; amd. Sec. 145, Ch. 310, L. 1974; R.C.M. 1947, 46-1114.

81-9-404 through 81-9-410 reserved.

81-9-411. Hide dealer or buyer's license fee — disposition of proceeds. Before engaging in business in this state, a hide dealer or buyer shall obtain a license from the department. The annual license fee is $5 for each established place of business at which the hide dealer or buyer purchases or deals in hides. The license continues in force for that calendar year. The moneys collected from the licenses shall be placed in the earmarked revenue fund for the department. The license must be renewed January 1 of each year.

History: En. Sec. 2, Ch. 151, L. 1929; re-en. Sec. 3350.8, R.C.M. 1935; amd. Sec. 2, Ch. 177, L. 1939; amd. Sec. 5, Ch. 44, L. 1961; amd. Sec. 4, Ch. 248, L. 1965; amd. Sec. 144, Ch. 310, L. 1974; amd. Sec. 48, Ch. 12, L. 1977; R.C.M. 1947, 46-1107.

81-9-412. License revocation. Upon receipt of a certified copy of the judgment of conviction of any hide dealer or buyer for any violation of this part, the department may revoke the license of such person for 1 year commencing on the date of the licensee's conviction.

History: En. Sec. 6, Ch. 44, L. 1961; amd. Sec. 49, Ch. 12, L. 1977; R.C.M. 1947, 46-1107.1(2).

81-9-413 through 81-9-420 reserved.

81-9-421. Falsifying hide certificate or failure to affix tag deemed a misdemeanor. (1) Any person, firm, association, or corporation either selling or disposing of or purchasing hides in any manner who shall willfully or intentionally falsify a hide certificate covering such hides shall be deemed guilty of a misdemeanor.

(2) Any person who shall have received any hide as provided in this part without affixing the required identification tag shall be deemed guilty of a misdemeanor.

History: En. Sec. 2, Ch. 61, L. 1923; re-en. Sec. 3350.2, R.C.M. 1935; amd. Sec. 4, Ch. 177, L. 1939; amd. Sec. 3, Ch. 44, L. 1961; R.C.M. 1947, 46-1102.

81-9-422. Acting without a license a misdemeanor. Any person acting as a hide dealer or buyer without a license as required by this part is guilty of a misdemeanor.

History: En. Sec. 6, Ch. 44, L. 1961; amd. Sec. 49, Ch. 12, L. 1977; R.C.M. 1947, 46-1107.1(1).

81-9-423. Mutilation or concealment of hides a felony. Every person who knowingly mutilates, destroys, or conceals an animal hide for the purpose of removing evidence of ownership of such hide or the animal from which the hide was removed is guilty of a felony and punishable upon conviction thereof by a fine of not less than $500 or more than $5,000 or imprisonment in the state prison for not less than 1 year or more than 10 years, or both.

History: (1)En. Sec. 1, Ch. 76, L. 1923; re-en. Sec. 3350.4, R.C.M. 1935; amd. Sec. 46, Ch. 12, L. 1977; Sec. 46-1103, R.C.M. 1947; (2)En. Sec. 3, Ch. 76, L. 1923; re-en. Sec. 3350.6, R.C.M. 1935; Sec. 46-1105, R.C.M. 1947; R.C.M. 1947, 46-1103, 46-1105; amd. Sec. 3, Ch. 236, L. 1979.

81-9-424. Sufficiency of pleading and proof in criminal prosecution. In any prosecution for the violation of the provisions of 81-9-423 it is not necessary for the state to allege in the complaint or information the ownership of the hide or of the animal from which the hide was removed, but it is sufficient to allege in the complaint or information that the owner of the hide or of the animal from which the hide was removed is unknown and the hide or animal is not the property of the defendant.

History: En. Sec. 2, Ch. 76, L. 1923; re-en. Sec. 3350.5, R.C.M. 1935; amd. Sec. 47, Ch. 12, L. 1977; R.C.M. 1947, 46-1104; amd. Sec. 11, Ch. 14, L. 1979.

CHAPTERS 10 THROUGH 19

RESERVED

CHAPTER 20

POULTRY AND EGGS

Part 1 — Poultry

Section

81-20-101. Poultry industry — powers and authority of department.
81-20-102. Injunctive remedies.
81-20-103. Violation.
81-20-104. Civil liability.

Part 2 — Eggs

81-20-201. Egg dealer's and egg grader's license — fee.
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81-20-203. Candling eggs intended for human consumption — candling defined.
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Part 1

Poultry

81-20-101. Poultry industry — powers and authority of department. For the promotion and protection of the poultry industry and to prevent, control, and exterminate infectious, contagious, dangerous, and destructive diseases affecting poultry, the department shall:

(1) supervise the sanitary condition of poultry in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine any lot, yard, land, building, room, premises, enclosure, or other place or section in this state which is or may be used or occupied by poultry and which, in the judgment of the department, is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine any poultry in this state when the poultry is affected with or has been exposed to disease

or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules which are necessary and proper to circumscribe, extirpate, control, or prevent the diseases.

(2) foster, promote, and protect the poultry industry in this state by the investigation of diseases and other subjects related to ways and means of preventing, controlling, and exterminating diseases of poultry;

(3) adopt and enforce rules for the prevention and extermination of such diseases and perform all other acts and things as may be necessary or proper in the fostering, promotion, or protection of the poultry industry in this state;

(4) adopt and enforce rules and orders necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting poultry in this state, including rules and orders necessary or proper governing inspections and tests of all poultry intended for importation into this state, before it may be imported into this state;

(5) adopt and enforce rules and orders necessary or proper for the inspection, testing, and quarantine of all poultry imported into this state.

History: **En. Sec. 1, Ch. 161, L. 1929; re-en. Sec. 3267.1, R.C.M. 1935; amd. Sec. 57, Ch. 310, L. 1974; R.C.M. 1947, 46-209.**

81-20-102. Injunctive remedies. The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating the provisions of this part or rules adopted under 81-20-101, notwithstanding the existence of other remedies at law. When the application of other remedies has been insufficient to compel action to control, extirpate, or prevent the spread of disease or upon a showing that an animal disease emergency exists and that other remedies probably would be insufficient to compel action to control the emergency, the department may apply for and the court may grant mandatory injunctive relief.

History: **En. 46-210.1 by Sec. 1, Ch. 190, L. 1977; R.C.M. 1947, 46-210.1.**

81-20-103. Violation. Any person, persons, firm, or corporation violating any provision of 81-20-101 or any rule or order promulgated by authority of the same or who shall obstruct or interfere with the performance of any duty or the exercise of any power hereby conferred shall be guilty of a misdemeanor.

History: **En. Sec. 2, Ch. 161, L. 1929; re-en. Sec. 3267.2, R.C.M. 1935; R.C.M. 1947, 46-210.**

81-20-104. Civil liability. A person, firm, or corporation which violates this part or rules or orders of the department is liable for damages sustained by a person because of the violation. The damages may be recovered by the person in a civil action in a court of competent jurisdiction.

History: **En. Sec. 30, Ch. 262, L. 1921; re-en. Sec. 3289, R.C.M. 1921; re-en. Sec. 3289, R.C.M. 1935; amd. Sec. 81, Ch. 310, L. 1974; amd. Sec. 24, Ch. 12, L. 1977; R.C.M. 1947, 46-239.**

Part 2

Eggs

81-20-201. Egg dealer's and egg grader's license — fee. (1) No person may buy, sell, or deal in eggs without first obtaining a license from the department of livestock for each establishment at which business is conducted. A licensee shall send to the department the reports which are requested by the department. The fee for the license is $5 per year for dealers buying eggs for sale at retail. The fee for the license is $20 per year for dealers buying eggs for resale at wholesale. All licenses shall be posted in a conspicuous place in each place of business. Licenses expire March 31 each year after the date of issuance.

(2) A person buying, selling, or dealing in eggs, a major portion of which are produced by his own fowl, or in amounts less than an average of 25 cases per month, is exempt from the requirements of this section.

(3) Wholesale and retail dealers who handle more than 25 cases of eggs per month supplying eggs to consumers must, when selling candled eggs, sell only eggs candled by or under the supervision of experienced and licensed graders. The fee for a grader's license is $5 per year. All candlers and graders must pass an examination required by the department of livestock. The license expires March 31 each year after the date of issuance.

History: (1), (2)En. Sec. 1, Ch. 189, L. 1931; re-en. Sec. 2634.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1939; amd. Sec. 4, Ch. 121, L. 1965; amd. Sec. 1, Ch. 176, L. 1969; amd. Sec. 1, Ch. 310, L. 1974; amd. Sec. 1, Ch. 141, L. 1977; Sec. 3-2301, R.C.M. 1947; (3)En. Sec. 9, Ch. 151, L. 1939; re-en. Sec. 2634.13, R.C.M. 1935; amd. Sec. 1, Ch. 88, L. 1953; amd. Sec. 7, Ch. 121, L. 1965; amd. Sec. 6, Ch. 310, L. 1974; amd. Sec. 5, Ch. 141, L. 1977; Sec. 3-2313, R.C.M. 1947; R.C.M. 1947, 3-2301, 3-2313.

81-20-202. Remittance of fees. All license fees shall be remitted to the department of livestock which shall deposit them in the state treasury to the credit of the general fund.

History: En. Sec. 2, Ch. 189, L. 1931; re-en. Sec. 2634.2, R.C.M. 1935; amd. Sec. 42, Ch. 147, L. 1963; amd. Sec. 2, Ch. 310, L. 1974; R.C.M. 1947, 3-2302.

81-20-203. Candling eggs intended for human consumption — candling defined. Every person engaged in the business of buying eggs intended for human consumption for resale shall maintain an adequate place for the proper candling and handling of the eggs by an egg grader licensed pursuant to this part or shall purchase only eggs which have already been properly candled and graded under the supervision of an egg grader licensed pursuant to this part. The term "candling" as used in this part means the careful examination, in a partially dark room or place, of the whole egg by means of a strong light.

History: En. Sec. 3, Ch. 189, L. 1931; re-en. Sec. 2634.3, R.C.M. 1935; amd. Sec. 2, Ch. 141, L. 1977; R.C.M. 1947, 3-2303.

81-20-204. Certificate of candling or packing. Every person buying eggs for resale at retail, except persons or firms who do not buy and sell more than 25 cases of eggs per month, shall candle all eggs offered to him which have not been candled under supervision of a licensed egg grader and shall refuse to buy eggs unfit for human food as defined in 81-20-205. "Rejects" shall be returned to the producer, if possible, or, if requested, the candling shall be done in the presence of the producer. A certificate shall be placed in or on every case of eggs, if candled and graded, in a manner which permits its easy reading and shall state exact grade and size, date of candling or other date approved by the department of livestock, and name and address of packer. If not candled or graded the certificate should state "not candled or graded", the name of the dealer, and when packed. The certificate shall be printed in letters large enough to be easily read.

History: En. Sec. 5, Ch. 189, L. 1931; re-en. Sec. 2634.5, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1939; amd. Sec. 3, Ch. 141, L. 1977; R.C.M. 1947, 3-2305.

81-20-205. Egg — when defined as unfit for human food. (1) Eggs hereinafter defined shall be deemed unfit for human food:

(a) "Addled" or "white rot" means an egg that is putrid or rotten.

(b) "Moldy" means an egg which, through improper care, has deteriorated so that mold spores have formed within the egg.

(c) "Blood spot" is a spot of blood adhering to the yolk of an egg.

(d) "Black rot" means an egg which has deteriorated to such an extent that the whole interior presents a blackened appearance.

(e) "Blood ring" means an egg in which the germ has developed to such an extent that blood is formed.

(f) "Adherent yolk" means an egg in which the yolk has become fastened to the shell.

(g) "Incubated eggs" shall include eggs which have been subjected to incubation, whether natural or artificial, for more than 48 hours, and it shall be unlawful to offer for sale incubated eggs unless branded or stamped with the word "incubated".

(h) "Bloody white" means an egg with a general reddish appearance due to blood mixed through it and which egg may show spots of blood floating in the white.

(i) "Meat spot" means that the egg has a speck of foreign matter adhering to the yolk or floating in the white.

(2) An egg that is smashed or broken so that the contents are leaking is unfit for human food.

(3) Eggs which are otherwise unwholesome or adulterated as such term is defined pursuant to the Federal Food, Drug, and Cosmetic Act and rules promulgated under authority of this part are unfit for human food.

History: En. Sec. 6, Ch. 189, L. 1931; re-en. Sec. 2634.6, R.C.M. 1935; amd. Sec. 3, Ch. 151, L. 1939; amd. Sec. 2, Ch. 176, L. 1969; R.C.M. 1947, 3-2306.

81-20-206. Notice to purchaser of grade of eggs. It is unlawful for a person to sell, offer, or expose for sale at wholesale or retail any eggs for human consumption without notifying the person purchasing or intending to purchase the eggs of the exact grade or quality and size or weight of the eggs, according to the standards prescribed by the department of livestock, by stamping or printing on the container of the eggs the grade or quality and size or weight and, if the eggs are offered for sale in bulk, without also displaying in a conspicuous place at the point where the eggs are offered or exposed for sale a placard or sign printed in letters 2 inches high giving the grade, quality, size, weight, and date of grading. This part does not affect the sale of eggs by the producers when the consumer purchases the eggs at the place of production.

History: En. Sec. 8, Ch. 189, L. 1931; re-en. Sec. 2634.8, R.C.M. 1935; amd. Sec. 5, Ch. 151, L. 1939; amd. Sec. 1, Ch. 71, L. 1973; amd. Sec. 3, Ch. 310, L. 1974; R.C.M. 1947, 3-2308.

81-20-207. Rules to be adopted by department of livestock. The department of livestock shall enforce this part and adopt rules necessary for the enforcement of this part, including rules for the processing, handling, and marketing of egg products whether shell, liquid, frozen, or dried.

History: En. Sec. 10, Ch. 189, L. 1931; re-en. Sec. 2634.10, R.C.M. 1935; amd. Sec. 4, Ch. 176, L. 1969; amd. Sec. 5, Ch. 310, L. 1974; R.C.M. 1947, 3-2310.

81-20-208. Penalties. Any person failing to comply with the provisions of this part or any rules adopted pursuant to this part is guilty of a misdemeanor and upon conviction for the first offense shall be punished by a fine of not less than $25 or more than $75. Upon conviction for the second or any subsequent violation of the foregoing provisions of this part the violator shall be fined not less than $50 or more than $200.

History: En. Sec. 11, Ch. 189, L. 1931; re-en. Sec. 2634.11, R.C.M. 1935; amd. Sec. 7, Ch. 151, L. 1939; amd. Sec. 4, Ch. 141, L. 1977; R.C.M. 1947, 3-2311.

81-20-209. Revocation of license. A license issued by the department of livestock under this part may be revoked by the department when the holder of the license fails to comply with the laws of this state which apply to the conduct of his business under the license. If a firm, person, or corporation whose license has been revoked by the department continues to buy, sell, or deal in eggs without a license, he is guilty of a misdemeanor and is subject to the penalties provided for in 81-20-208.

History: En. Sec. 10, Ch. 151, L. 1939; Sec. 2634.14, R.C.M. 1935; amd. Sec. 7, Ch. 310, L. 1974; R.C.M. 1947, 3-2314.

CHAPTER 21

DAIRY PRODUCTS

Part 1 — Regulation of Dairies Selling Milk or Cream for Public Consumption

Section
81-21-101. Milk plant defined.
81-21-102. Licensing of milk plants and dairies selling milk or cream for public consumption.
81-21-103. Exceptions of certain producers of dairy products.
81-21-104. Injunctive remedies.
81-21-105. Penalty.
81-21-106. Civil liability.

Part 1

Regulation of Dairies Selling Milk or Cream for Public Consumption

81-21-101. Milk plant defined. A fluid milk plant is a place where milk or cream is not produced but is purchased or collected and prepared for distribution to the consumer in liquid form.

History: En. Sec. 23, Ch. 262, L. 1921; re-en. Sec. 3282, R.C.M. 1921; amd. Sec. 11, Ch. 35, L. 1923; amd. Sec. 1, Ch. 170, L. 1929; re-en. Sec. 3282, R.C.M. 1935; amd. Sec. 1, Ch. 382, L. 1973; amd. Sec. 76, Ch. 310, L. 1974; amd. Sec. 19, Ch. 12, L. 1977; R.C.M. 1947, 46-232(part).

81-21-102. Licensing of milk plants and dairies selling milk or cream for public consumption. (1) It is unlawful for the following businesses to operate in this state without first obtaining a license from the department of livestock:

(a) a dairy selling milk or cream for public consumption in the form in which it is originally produced;

(b) a condensed, evaporated, or powdered milk plant;

(c) a fluid milk plant.

(2) A license expires on December 31 of the year issued. The department may, following the procedures in the Montana Administrative Procedure Act, deny, suspend, or revoke a license when it determines that a person to whom the license is issued has failed to comply with the rules of the department or has failed to conduct his establishment in a sanitary manner. All license fees collected shall be deposited into the general fund.

(3) The department may issue a restraining order prohibiting a dairy from selling or giving away milk or cream not produced or handled under the laws of this state or the rules of the department. It is unlawful for a dairy, while restrained, to sell or give away for public consumption milk or cream produced or handled by the dairy, and it is also unlawful for a dairy products manufacturing plant, milk plant, or cream station to purchase or use the cream or milk from a dairy while the dairy is restrained.

(4) The following license fees are charged for licenses issued under this section:

(a) condensed, evaporated, or powdered milk factory, $50;

(b) fluid milk plant, $50;

(c) dairy, $5.

(5) A person violating this section is guilty of a misdemeanor.

History: En. Sec. 23, Ch. 262, L. 1921; re-en. Sec. 3282, R.C.M. 1921; amd. Sec. 11, Ch. 35, L. 1923; amd. Sec. 1, Ch. 170, L. 1929; re-en. Sec. 3282, R.C.M. 1935; amd. Sec. 1, Ch. 382, L. 1973; amd. Sec. 76, Ch. 310, L. 1974; amd. Sec. 19, Ch. 12, L. 1977; R.C.M. 1947, 46-232(part).

81-21-103. Exceptions of certain producers of dairy products. The owners or operators of dairies, creameries, butter factories, cheese factories, or other places of business engaged in the production, storage, or transportation of dairy products are not required to procure a license from the department of health and environmental sciences, insofar as the business of production, storage, or transportation of these food products is concerned. This section does not limit the supervision or regulation of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale thereat by the department of health and environmental sciences, nor does this section limit the duties imposed by law on the department of health and environmental sciences to make sanitary rules for the eradication or control of an epidemic of human disease which may exist in a community.

History: En. Sec. 24, Ch. 262, L. 1921; re-en. Sec. 3283, R.C.M. 1921; re-en. Sec. 3283, R.C.M. 1935; amd. Sec. 77, Ch. 310, L. 1974; amd. Sec. 20, Ch. 12, L. 1977; R.C.M. 1947, 46-233(part).

81-21-104. Injunctive remedies. The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating the provisions of this chapter or rules adopted under 81-2-102, notwithstanding the existence of other remedies at law. When the application of other remedies has been insufficient to compel action to control, extirpate, or prevent the spread of disease or upon a showing that an animal disease emergency exists and that other remedies probably would be insufficient to compel action to control the emergency, the department may apply for and the court may grant mandatory injunctive relief.

History: **En. 46-210.1 by Sec. 1, Ch. 190, L. 1977; R.C.M. 1947, 46-210.1.**

81-21-105. Penalty. Any person, persons, firm, or corporation violating any provision of this chapter, or the rule or order promulgated by authority of 81-2-102, shall be guilty of a misdemeanor. Violations of this chapter shall be tried without undue delay in any court of competent jurisdiction.

History: **En. Sec. 29, Ch. 262, L. 1921; re-en. Sec. 3288, R.C.M. 1921; re-en. Sec. 3288, R.C.M. 1935; amd. Sec. 23, Ch. 12, L. 1977; R.C.M. 1947, 46-238.**

81-21-106. Civil liability. A person, firm, or corporation which violates this part or rules or orders of the department is liable for damages sustained by a person because of the violation. The damages may be recovered by the person in a civil action in a court of competent jurisdiction.

History: **En. Sec. 30, Ch. 262, L. 1921; re-en. Sec. 3289, R.C.M. 1921; re-en. Sec. 3289, R.C.M. 1935; amd. Sec. 81, Ch. 310, L. 1974; amd. Sec. 24, Ch. 12, L. 1977; R.C.M. 1947, 46-239.**

CHAPTER 22

MANUFACTURED DAIRY PRODUCTS

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Section

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81-22-602. Deceit in grade, measure, or test of milk and cream unlawful.

Part 1

Administration

81-22-101. Definitions. For the purpose of this chapter, the following definitions are adopted:

(1) "Agent" means a person who is authorized by another person to act for him in dealing with a third person.

(2) "Butter" is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass which also contains a small portion of the other milk constituents, with or without salt, and must contain not less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.

(3) "Cheese" is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free substance not less than 50% of milk fat and not more than 39% of moisture. Cheese may also contain added coloring matter.

(4) "Cheese factory" means a place where cheese, including cream cheese, cottage cheese, creamed cottage cheese, cheese curd, cottage cheese dressing,

and low-fat counterparts of cheese, either cultured or directly acidified, is made for commercial purposes.

(5) "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

(6) "Code of Federal Regulations" refers especially but is not limited to Title 21 which contains the definitions and standards of identity for products as established by the food and drug administration, United States department of health, education, and welfare.

(7) "Cream" means the milk fat which rises to the surface when milk is allowed to stand or which is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

(8) "Creamery" means a place where butter is made for commercial purposes.

(9) "Culture" means the harmless lactic acid fermenting bacteria which are added to milk or cream to make manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and other similar products.

(10) "Dairy" or "dairy farm" means a place where one or more cows or goats are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(11) The term "department", unless otherwise indicated, means the department of livestock provided for in Title 2, chapter 15, part 31.

(12) "Direct acidification", "directly acidified", and similar terms mean the process of adding a food grade acid to milk or cream instead of or in addition to the adding of culture.

(13) "Filled dairy products" means milk, cream, skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added or which has been blended or compounded with fat or oil other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

(14) "French ice cream", "French custard ice cream", "cooked ice cream", "ice custard", "parfaits", and similar frozen products, except sherbets and water ices, are varieties of ice cream.

(15) "Frozen dessert plant" means a place where products named in subsections (27)(a)(iii) through (27)(a)(ix) of this section are made for commercial purposes.

(16) "Fruit ice cream" shall conform to the requirements of ice cream, except that the fruit ingredients must be from sound, clean, and mature fruit, and it must contain not less than 9% of milk fat.

(17) "Grading" means the examination of milk, cream, or products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

(18) "Ice" or "ice sherbet" is the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, with or without harmless coloring or added stabilizer composed of wholesome edible material, and must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid. It may contain no milk solids.

(19) "Ice cream" is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet butter, or any combination of these products, with or without sweetening, or clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10% of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed 1% gelatin. No frozen milk or milk product may be manufactured or sold unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All ice cream must be manufactured from pasteurized ice cream mix.

(20) An "ice cream factory" is a place where ice cream mix is frozen into ice cream for commercial purposes.

(21) (a) "Ice cream mix" is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

(b) "Mix" includes the liquid, unfrozen product from which those frozen products listed under subsection (27)(a)(iii) through (27)(a)(v) and (27)(a)(vii) through (27)(a)(xii) are made.

(22) An "ice cream mix factory" is a place where ice cream mix is made.

(23) "Intrastate commerce" means commerce within this state under the jurisdiction of the state and includes the operation of a business or service establishment.

(24) "Manufactured dairy product" means an item enumerated in subsection (27) or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality. For purposes of reporting production and licensing, "manufactured dairy product" includes but is not limited to:

(a) ice cream or its mix;

(b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes;

(c) sherbets of all kinds or their mixes;

(d) animal or vegetable fat frozen desserts or their mixes;

(e) frozen confections or their mixes when made in a manufactured dairy products plant;

(f) water ices or their mixes;

(g) frozen dessert sandwiches, bars, cones, and similar novelties;

(h) frozen dessert made of nondairy origins and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant;

(i) ice milk or its mix;

(j) cheese of all kinds, including cottage cheese, cheese curd, cheese dressing, and cream cheese, either cultured or directly acidified;

(k) sour cream when cultured or directly acidified;

(l) eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;

(m) buttermilk, cultured or from churned butter or directly acidified;

(n) butter;

(o) yogurt, low-fat yogurt or flavored yogurt, either cultured or directly acidified or frozen.

(25) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected and converted into a product or into a different state of appearance or quality or which manufactures those products listed in subsection (27). If only products of semblance or imitation of dairy products are made, the plant is not considered as a manufactured dairy products plant.

(26) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully accredited as tuberculosis free by the United States department of agriculture or in the process of being accredited when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

(27) (a) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as but not limited to:

(i) butter;

(ii) cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese which are either cultured or directly acidified, and cheese dressings;

(iii) ice cream or its mix;

(iv) frozen dessert or its mix;

(v) sherbets of all kinds or their mixes;

(vi) frozen ice cream bars, sandwiches, cones, and similar novelties;

(vii) frozen desserts or products made in the semblance or imitation of frozen dessert;

(viii) frozen confections or their mixes;

(ix) water ices or their mixes;

(x) ice milk or its mix;

(xi) French ice cream, French custard, or their mixes;

(xii) frozen custard or its mix and frozen yogurt;

(xiii) yogurt, flavored yogurt, and low-fat yogurt;

(xiv) sour cream, either cultured or directly acidified;

(xv) cream cheese, either cultured or directly acidified;

(xvi) buttermilk, either cultured, from churned butter, or directly acidified;

(xvii) eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar flavored products;

(xviii) dry or powdered milk; and

(xix) condensed milk products.

(b) The items specified in subsection (27)(a) of this section shall conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products shall be in accordance with the Montana Food, Drug, and Cosmetic Act.

(28) "Milk or cream station" means a place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

(29) "Milk sherbet" is the pure, clean, frozen product made from milk product, water, and sugar, with harmless fruit or fruit juice flavoring and with or without harmless coloring, which must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain not less than 4% by weight of solids.

(30) "Mislabeled", "unwholesome", "food additives", "optional ingredients", "impure", "misbranded", "contaminated", "adulterated", "perishable", "hazardous", "unfit", "spoiled", "damaged", and similar terms, when applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy product, are as defined in Title 50, chapter 31.

(31) "Official test" means test procedures outlined in the sources referred to under 81-22-301 concerning samples, methods, and rules of evidence.

(32) "Pasteurization", "pasteurizing", and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F and holding it continuously at or above this temperature for at least 30 minutes or to at least 161 degrees F and holding it continuously at or above this temperature for at least 15 seconds in equipment which is properly operated and approved by the department. Milk products that have a higher fat content than milk or contain added sweeteners shall be heated to at least 155 degrees F and held continuously at or above this temperature for at least 30 minutes, or to at least 175 degrees F and held continuously at or above this temperature for at least 25 seconds. This definition does not bar any other pasteurization process which has been recognized by the United States public health service to be equally effective and which is approved by the department.

(33) "Person" means an individual, firm, partnership, corporation, cooperative, or other business unit or trade device.

(34) "Producer" means the person who exercises control over the production of milk or cream delivered to a milk or cream receiving station or manufactured dairy products plant or who receives payment for milk or cream used in manufacturing.

(35) "Raw milk" or "raw milk products" means milk or milk products which have not been treated by a process of pasteurization.

(36) "Renovated butter" or "processed butter" is the product made by melting and reworking, without the addition or use of chemicals or substances except whole milk, cream, or salt, and must contain not less than 80% of milk fat.

(37) "Safe temperature" means 45 degrees F or less, unless the product is frozen, in which case the temperature must be at or below 0 degrees F.

(38) "Skimmed milk cheese" is the sound, solid, and ripened product made from skim milk by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning.

(39) "Testing", "test", "tested", and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

(40) "Water ice" means a frozen product containing but not limited to the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional ingredients.

History: (1), (4)(a), (5) thru (7), (8)(b), (9), (10), (12), (13), (15), (17), (21)(b), (23) thru (27), (28)(b), (30) thru (32), (33)(b), (34), (35), (37), (39), (40)En. Sec. 10, Ch. 413, L. 1971; amd. Sec. 17, Ch. 310, L. 1974; amd. Sec. 4, Ch. 12, L. 1977; Sec. 3-2497, R.C.M. 1947; (2), (3), (4)(b), (8)(a), (11), (14), (16), (18) thru (20), (21)(a), (22), (28)(a), (29), (33)(a), (36), (38)En. Sec. 4, Ch. 93, L. 1929; amd. Sec. 1, Ch. 39, L. 1931; re-en. Sec. 2620.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1937; amd. Sec. 8, Ch. 310, L. 1974; amd. Sec. 1, Ch. 12, L. 1977; Sec. 3-2404, R.C.M. 1947; R.C.M. 1947, 3-2404(1) thru (17), 3-2497; amd. Sec. 12, Ch. 14, L. 1979.

81-22-102. General authority of department. (1) The department may regulate and establish sanitation standards for persons operating dairies producing milk for manufacturing purposes. The department may regulate and establish sanitation and quality standards for a person engaged in the processing of manufactured dairy products or of products made or sold in the semblance or imitation of dairy products in this state when those products made in semblance or imitation of dairy products are made in a manufactured dairy products plant.

(2) The department may adopt minimum standards for the production, transportation, grading, testing, use, processing, packaging, and storage of milk and cream used for manufacturing purposes and of manufactured dairy products.

History: (1)En. Sec. 1, Ch. 413, L. 1971; amd. Sec. 9, Ch. 310, L. 1974; Sec. 3-2488, R.C.M. 1947; (2)En. 2, Ch. 413, L. 1971; amd. Sec. 10, Ch. 310, L. 1974; amd. Sec. 2, Ch. 12, L. 1977; Sec. 3-2489, R.C.M. 1947; R.C.M. 1947, 3-2488, 3-2489.

81-22-103. New or amended rules — mailing — hearing — judicial review. (1) Every new or amended rule proposed by the department under this chapter shall be mailed to each person licensed under this chapter who will be affected by the rule, at least 45 days before the date on which the rule becomes effective.

(2) On application in writing filed at least 15 days before the effective date of the proposal by a person licensed under this chapter, the department shall vacate the effective date of the proposed rule and hold a public hearing on and take evidence concerning it. Within 30 days after the conclusion of the hearing, the department shall make written findings and conclusions and a written decision based on the hearing, determining whether the rule shall be adopted. A new or amended rule adopted following the hearing and conclusion may not take effect until 90 days after the date of the decision.

(3) The district court of the first judicial district has jurisdiction to review, modify, or set aside a decision adopting a new or amended rule under this chapter on petition made to it at any time before the effective date of the rule by a person claiming to be adversely affected by the decision.

History: En. Sec. 8, Ch. 413, L. 1971; amd. Sec. 15, Ch. 310, L. 1974; R.C.M. 1947, 3-2495.

81-22-104. Enforcement of laws and rules — violation as misdemeanor. (1) The department shall supervise and enforce the laws and rules which pertain to the standards of quality and sanitation of manufactured dairy products and of cream, whole milk, skimmed milk, condensed milk, evaporated milk, and food additives used in manufacturing dairy products.

(2) Rules adopted under this chapter have the effect of law, and violation of these rules is a misdemeanor, punishable as provided in 81-22-601 unless a specific penalty has been provided.

History: En. Sec. 6, Ch. 413, L. 1971; amd. Sec. 14, Ch. 310, L. 1974; R.C.M. 1947, 3-2493.

81-22-105. Investigation of complaints and violations — injunction. The department shall provide for periodic inspections and investigations to disclose violations of this chapter or of rules adopted under this chapter. The department shall receive and provide for the investigation of complaints and request the institution and prosecution of civil or criminal actions, or both. This chapter and the rules adopted under it may be enforced by injunction in a court having jurisdiction to grant injunctive relief. An adulterated, impure, contaminated, misbranded, condemned, or mislabeled article or product involved in a violation of this chapter or of the rules adopted under this part is subject to seizure and disposition under an order of the court.

History: En. Sec. 9, Ch. 413, L. 1971; amd. Sec. 16, Ch. 310, L. 1974; amd. Sec. 3, Ch. 12, L. 1977; R.C.M. 1947, 3-2496.

81-22-106. Names and addresses of producers furnished on request. The operator of any manufactured dairy products plant or grade A milk plant shall, on request of the department, furnish the department with the names and addresses of all producers from whom the plant obtains milk or cream.

History: En. Sec. 21, Ch. 413, L. 1971; amd. Sec. 26, Ch. 310, L. 1974; R.C.M. 1947, 3-24-108.

81-22-107. Use of inspections, tests, samples, etc., as evidence. All copies of inspections, written transcriptions, tests, samples of dairy products, analyses, correspondence, records of payment, trip and field reports, and photographic presentations relating to matters under this chapter may be used as evidence in any court of jurisdiction, at hearings, or as testimony of the facts disclosed.

History: En. Sec. 22, Ch. 413, L. 1971; R.C.M. 1947, 3-24-109.

81-22-108. Antimonopoly statutes applicable. The provisions of Title 30, chapter 14, part 2, relating to monopoly in the purchase or sale of products in general use are hereby expressly made applicable to all persons engaged in the business of buying milk, cream, or butterfat for the purpose of manufacture and those who shall violate any of the provisions of said sections. All milk, cream, butterfat, manufactured dairy products, or products made in the semblance or imitation of manufactured dairy products are hereby declared to be commodities and products in general use within the meaning of the sections aforesaid.

History: En. Sec. 43, Ch. 413, L. 1971; R.C.M. 1947, 3-24-130.

Part 2

Licensing Provisions

81-22-201. License required to operate manufactured dairy products plant. (1) It shall be unlawful for any person to operate a manufactured dairy products plant, concentrated, condensed, or evaporated milk and/or cream plant, milk and cream buying station, creamery, dairy producing milk for manufacturing purposes, water ice manufacturing plant, cheese plant including cottage cheese, and cream cheese, sour cream, yogurt, or frozen dessert manufacturing plant without first obtaining a license from the department.

(2) Any manufactured dairy products plant or dairy which undergoes a change of ownership shall be considered a new plant or dairy for relicensing purposes, provided that changes of ownership shall not be construed to include changes of stockholders.

History: En. Sec. 20, Ch. 413, L. 1971; R.C.M. 1947, 3-24-107.

81-22-202. Licensing of persons engaged in production of milk. (1) The department may license persons engaged in the production of milk for manufacturing purposes and license persons who manufacture dairy products or products made in their semblance or imitation when the products are made in a manufactured dairy products plant.

(2) The department may examine and license weighers, graders, samplers, and milk and cream testers in order to establish the qualifications of these persons to perform those operations or tests for which the licenses are issued.

History: En. Sec. 3, Ch. 413, L. 1971; amd. Sec. 11, Ch. 310, L. 1974; R.C.M. 1947, 3-2490.

81-22-203. Renewal, suspension, or revocation of license — grounds — hearing — appeal to district court. (1) The department may deny renewal of, suspend, or revoke a license issued under this part or its rules for cause or failure to comply with this chapter or with the rules, testing procedures, or methods adopted under this chapter or when the department has reason to believe that the licensee's products may be detrimental to or jeopardize the health and welfare of the public.

(2) Before revoking, denying renewal of, or suspending a license, the department shall give written notice of its intention to revoke, deny, or suspend the license and its reasons therefor. The department shall give the licensee a time limit of 10 days from receipt of the notice during which the licensee may request a hearing to show cause why his license should not be revoked, denied, or suspended. The notice shall be sent by certified mail, or personal service may be made on the licensee by a representative of the department. Failure of the licensee to request a hearing within the time allowed by the department is considered as his desire not to contest the department's reasons for suspending, denying, or revoking the license.

(3) If the licensee does request a hearing, the department shall appoint a time and place for an administrative hearing in the county where the licensee is licensed.

(4) The date established for the hearing must be not less than 10 days or more than 30 days after receipt of the licensee's request for the hearing. A request for a hearing shall serve as a bar to prosecution until a decision

from the department becomes final. The licensee at the hearing may testify or present evidence having a bearing on the denial, suspension, or revocation of his license, and after hearing all the evidence, the department shall make a determination. If a license is suspended, denied, or revoked, it may not be reinstated until examination or inspection by the department shows that the cause for suspension, denial, or revocation has been eliminated or corrected.

(5) It is unlawful for a licensee to carry on the business or operations for which he was licensed, during the term of suspension or revocation, and if he does so, the licensee is subject to the penalties provided in the chapter.

(6) A licensee who is aggrieved by the decision of the department in matters pertaining to suspension, denial, or revocation of a license may appeal, within 30 days after the date of determination by the department, to the district court of the county in which he was licensed, if in the state, or in the case of a business firm of any nature in the state, of the county of its principal place of business.

(7) If a license is revoked a new license must be obtained from the department, but a new license may be issued only when the cause for revocation has been corrected.

History: En. Sec. 19, Ch. 413, L. 1971; amd. Sec. 25, Ch. 310, L. 1974; R.C.M. 1947, 3-24-106.

81-22-204. License required for milk or cream route. It is unlawful for a person to engage in hauling milk or cream on an established milk or cream route for a manufactured dairy products plant, milk plant, or milk or cream station without first procuring a license from the department. The fee for the license is $5 annually.

History: En. Sec. 13, Ch. 413, L. 1971; amd. Sec. 20, Ch. 310, L. 1974; R.C.M. 1947, 3-24-100; amd. Sec. 13, Ch. 14, L. 1979.

81-22-205. Examination and licensing of persons engaged in testing. (1) A person may not operate a butterfat, protein, solids, or other component content test where milk or cream is bought and paid for on the basis of these values without first passing an appropriate examination and obtaining the license required by the department. A person desiring to operate these tests shall apply to the department for permission to take the butterfat, protein, solids, or other component content test operator's examination. The examination shall be given to the applicant by the department. On passing the examination to the satisfaction of the department, the applicant shall be issued a license authorizing him to conduct these tests in this state. A fee of $10 shall be paid for each license and for each renewal.

(2) Milk and cream tester's licenses may be revoked, suspended, or denied where testing is not conducted under official test procedures or under department rules. If the tester regularly or habitually reports results below the actual values of the butterfat, protein, solids, or other compound component values, the licensee is subject to the penalties provided in this chapter. A person who alters the results of an official test is subject to the penalties provided in this chapter.

History: En. Sec. 15, Ch. 413, L. 1971; amd. Sec. 22, Ch. 310, L. 1974; R.C.M. 1947, 3-24-102.

81-22-206. Licensing of graders, weighers, and samplers. It is unlawful for a person to grade, weigh, or sample milk or cream to be used for processing into grade A milk and cream or used in manufactured dairy products without first procuring a license as a grader, weigher, and sampler from the department and passing the examination required by the department.

History: **En. Sec. 18, Ch. 413, L. 1971; amd. Sec. 24, Ch. 310, L. 1974; R.C.M. 1947, 3-24-105(2).**

81-22-207. License — issuance and penalty. (1) All licenses issued under this part are issued as a matter of privilege, rather than as a matter of right, and only after proper qualifications under the rules of the board.

(2) All licenses issued under this part are valid, unless sooner suspended or revoked for cause, from the date of issue through December 31 of the year in which issued. All licenses shall be renewed by the first January 31 following the date of license expiration on payment of the required fee.

(3) All licenses issued under this part shall be posted in conspicuous view at the place of business.

(4) Licenses issued under this part are not transferable from place to place or person to person.

(5) Penalties of $5 per month or fraction of a month from January 31 of each year may be imposed by the department for a failure to apply for a license under this part. Regulatory action may not be taken against a dairyman licensed under this part until 2 years following the adoption of rules under this chapter.

History: **En. Sec. 14, Ch. 413, L. 1971; amd. Sec. 21, Ch. 310, L. 1974; R.C.M. 1947, 3-24-101.**

81-22-208. Licenses and schedule of license fees. (1) Licenses and license fees required under this part are as follows:

(a) Manufactured dairy products plant $50

However, a plant license is not required of a food service establishment licensed by the Montana department of health and environmental sciences as defined in 50-50-102, and no license is required to manufacture nondairy products when only such products are manufactured.

(b) Cream station $5

However, a license is not required if the cream station is owned and operated by a licensed plant; but the milk and cream, equipment, premises, and means of transporting milk or cream is subject to official inspection.

(c) Dairy producing milk for manufacturing purposes $5

However, a dairy license is not required if the dairy farm is licensed by the department to produce and sell milk or cream in the form in which it is originally produced as required by 81-21-102.

(d) Grader-weigher-sampler $5
(e) Tester $10
(f) Hauler $5

However, a separate grader-weigher-sampler, tester, and hauler license is required whether a person performing these activities owns and operates the plant, is employed by the plant, or is self-employed.

(2) A license is valid on the date issued through December 31 of that year unless suspended or revoked by the department. A license must be renewed by the first January 31 following the expiration date of December 31. A license renewal application form may be supplied by the department. When the license renewal application form is returned to the department, it shall be accompanied by the correct license fee. A license shall be posted in conspicuous view at the place of business. A license is not transferable from

place to place or from person to person. A penalty of $5 per month, or fraction of a month, after January 31 may be imposed by the department on a person who fails to apply for renewal of his license if under the part that person is required to be licensed.

(3) All license fees collected shall be deposited in the general fund.

History: **En. Sec. 1, Ch. 451, L. 1973; R.C.M. 1947, 3-24-112.1.**

81-22-209. License requirements applicable. The licenses required under this part apply only to those licenses issued by the department. This part does not repeal or abrogate the authority of or the issuance of licenses by the department of health and environmental sciences.

History: **En. Sec. 42, Ch. 413, L. 1971; amd. Sec. 36, Ch. 310, L. 1974; R.C.M. 1947, 3-24-129.**

Part 3

Inspection

81-22-301. Tests and analyses — admissibility as evidence. (1) The department may require a chemist, biologist, microbiologist, serologist, or other qualified employee of the department of health and environmental sciences or other laboratory approved by the department to test or analyze samples of milk, cream, manufactured dairy products, or products made in the semblance or imitation of these products.

(2) Any appropriate test method listed in Standard Methods for the Examination of Dairy Products, current edition—American Public Health Association, Inc., or Standard Methods for the Examination of Water and Waste Water, current edition—American Public Health Association, Inc., or the methods in the Official Methods of Analysis of the Association of Official Analytical Chemists, current edition as published by the Association of Official Analytical Chemists, or any other appropriate tests approved by the department may be used, and the results of these tests or analyses are admissible as prima facie evidence of the facts disclosed, in a court, hearing, or proceeding arising under this chapter, when identified by the sample numbers and verified by the department representative and analyst handling them. These tests shall be designated and referred to as "official tests".

History: **En. Sec. 11, Ch. 413, L. 1971; amd. Sec. 18, Ch. 310, L. 1974; amd. Sec. 5, Ch. 12, L. 1977; R.C.M. 1947, 3-2498.**

81-22-302. Taking and preservation of samples. (1) A person purchasing or sampling milk or cream for manufacture, sale, or shipment and paying for the milk or cream on the basis of the butterfat, protein, solids, or other compound components contained in the milk or cream as determined by official test, when receiving the milk or cream, shall take a sample of the milk or cream.

(2) All samples taken shall be plainly marked or labeled on the records of the purchaser or sampler to correspond with the name of the person from whom the purchase was made or sample obtained. The record of purchase shall also show the weight of the milk or cream, the results of the analysis, the date of sampling, and the amount paid. All milk and cream samples on which payment for butterfat, protein, solids, or other components is based

shall be kept and suitably preserved by the purchaser for a minimum of 14 days following testing in the case of milk and for at least 2 days in the case of cream. These samples are subject to retest by the department.

(3) This section does not prohibit the weighing or measuring of milk in and sampling of milk from farm bulk milk tanks or the use of composite or single samples of milk according to rules adopted by the department or the test procedures prescribed in this chapter.

History: En. Sec. 12, Ch. 413, L. 1971; amd. Sec. 19, Ch. 310, L. 1974; R.C.M. 1947, 3-2499.

81-22-303. Sampling and testing by department. The department shall have the authority to sample, test, and/or retest samples of milk or cream or their products at any dairy, at the premises of any supplier of milk or cream for manufacturing purposes, or at any manufactured dairy products plant, milk plant, or cream buying or receiving station.

History: En. Sec. 16, Ch. 413, L. 1971; R.C.M. 1947, 3-24-103.

81-22-304. Department's right of entry into dairy or plants for inspection — penalty. (1) The department or its authorized agent has the right of entry during normal business hours, including Sundays and holidays, into a dairy supplying milk or cream for manufacturing purposes, manufactured dairy products plant, milk plant, cream receiving station, transportation facility, or any premises where dairy products, dairy manufactured products, or their substitutes or imitations are produced, manufactured, sold, offered for sale, or stored while in transit to inspect the dairy or plant, its facilities and products, or to obtain samples for testing or analysis. It is unlawful for a person to interfere with the department or its authorized agent in the performance of its duty to enter, inspect, or obtain samples.

(2) Violation of this section is a misdemeanor and subjects the offender to a fine of not less than $50 and not more than $500 or to imprisonment in the county jail for not less than 1 or more than 30 days or both such fine and imprisonment.

History: En. Sec. 27, Ch. 413, L. 1971; amd. Sec. 30, Ch. 310, L. 1974; R.C.M. 1947, 3-24-114.

81-22-305. Cooperative agreements with other agencies. (1) The department may enter into cooperative working agreements with state, county, city, and town departments and their political or departmental subdivisions to facilitate the performance of its functions or duties.

(2) This section permits the department to establish cooperative working agreements with health departments, sanitarians, or health officers when special investigations, sampling, or analyses are considered advisable.

History: En. Sec. 28, Ch. 413, L. 1971; amd. Sec. 31, Ch. 310, L. 1974; R.C.M. 1947, 3-24-115.

Part 4

Sanitation, Quality, and Labeling Requirements

81-22-401. Grading of milk — condemnation of unsafe milk. Milk or cream purchased for use in milk plants or for use in a manufactured dairy product in this state shall be graded by licensed graders, weighers, and samplers. It is unlawful to sell, purchase, or use milk or cream for a food purpose if the milk or cream is found to be musty, adulterated, rancid, dirty, with marked undesirable odors or flavors, or to contain foreign objects, fragments, substances, or excessive bacteria. The milk or cream grader or the department shall condemn the milk or cream and may add to the milk or cream a nontoxic coloring substance or rennet and return it to or leave it with the producer with an explanation of the cause for rejection.

History: En. Sec. 17, Ch. 413, L. 1971; amd. Sec. 23, Ch. 310, L. 1974; R.C.M. 1947, 3-24-104.

81-22-402. Employment of grader, weigher, and sampler — revocation of operator's license. (1) Persons receiving or purchasing milk or cream and persons collecting milk or cream on milk or cream routes shall provide a licensed grader, weigher, and sampler at each receiving station or for each route.

(2) A person who knowingly employs an unlicensed person as a grader, weigher, and sampler or one whose license has been revoked or suspended is subject to revocation of his own license to operate a manufactured dairy products plant or cream or milk receiving station or to the penalties prescribed in this chapter.

History: En. Sec. 18, Ch. 413, L. 1971; amd. Sec. 24, Ch. 310, L. 1974; R.C.M. 1947, 3-24-105(1), (3).

81-22-403. Plans for construction, remodeling, or relocation of manufacturing plant. (1) Before the construction, extensive remodeling, or relocation of a dairy products manufacturing plant, detailed plans shall be submitted to the department for review and approval before construction, remodeling, or relocation begins. The plans must show:

(a) size of rooms;
(b) type of building material;
(c) lighting and electrical system;
(d) ventilation;
(e) location of water supply;
(f) sewage disposal;
(g) materials to be used in floors, walls, and ceilings;
(h) location and type of floor drains;
(i) plumbing, plumbing fixtures, equipment; and
(j) the makes, models, and serial numbers of new or used equipment or machinery being added to or replacing existing equipment or machinery.

(2) Replacement equipment shall be of the NSF or 3A standard approved types, unless otherwise approved by the department. Construction and materials must conform to rules of the department and of building, electrical, and plumbing codes in effect in the area.

(3) Wastewater, sewage, and air pollutants shall be disposed by means approved by the department of health and environmental sciences, and evidence shall be submitted that approval has been obtained from the department of health and environmental sciences.

History: En. Sec. 23, Ch. 413, L. 1971; amd. Sec. 27, Ch. 310, L. 1974; R.C.M. 1947, 3-24-110.

81-22-404. Removal or destruction of products in case of potential health hazards. (1) When epidemiological evidence indicates or the likelihood exists that a dairy or manufactured dairy products plant is producing, manufacturing, storing, handling, or offering for sale milk or a manufactured dairy product which is adulterated or which may be detrimental to the health or safety of the consumer, the department may request the department of health and environmental sciences to remove the product from the market or to hold, dispose of, destroy, or treat the product so that it no longer constitutes a potential health hazard.

(2) It is unlawful for a person to violate an order which requires the product's removal from the market or its retention, disposal, destruction, or treatment. Violation is punishable as a misdemeanor, and each violation is subject to a fine of not less than $25 or more than $250 or to imprisonment in the county jail for not more than 30 days or both fine and imprisonment.

History: **En. Sec. 26, Ch. 413, L. 1971; amd. Sec. 29, Ch. 310, L. 1974; R.C.M. 1947, 3-24-113.**

81-22-405. Labeling of cheese containers. It shall be unlawful and punishable as a misdemeanor for any person to offer for sale, expose for sale, or sell any cheese in any container or wrapper unless such container or wrapper bears a legible label or inscription indicating the net weight, type or style of cheese, and the manufacturer's or distributor's name and address or plant number.

History: **En. Sec. 30, Ch. 413, L. 1971; R.C.M. 1947, 3-24-117(part).**

81-22-406. Products to be kept at safe temperature. All manufactured dairy products which are handled, displayed, transported, exposed for sale, offered for sale, or sold in Montana shall be considered perishable and potentially hazardous and shall be kept at safe temperature or below; provided, however, that:

(1) nothing in this requirement shall be construed as prohibiting higher temperatures which are necessary for curing, ripening, or aging of certain cheeses and cultured products; and

(2) this section does not apply to manufactured dairy products packaged in hermetically sealed containers or sterile manufactured dairy products which do not require refrigeration for their safekeeping.

History: **En. Sec. 30, Ch. 413, L. 1971; R.C.M. 1947, 3-24-117(part).**

81-22-407. Sanitary regulation of imported products. (1) All manufactured dairy products or imitations or products made in semblance thereof, covered by this chapter, shipped into Montana for sale, display, or use must be produced under the same or equivalent sanitary regulations and requirements as govern the production of such products in Montana.

(2) Unless the sanitary conditions of manufacture and standards of identity conform to the same or equivalent standards required by the laws or regulations of this state, such products shall not be sold, given away, displayed, transported into, or used in Montana.

History: **En. Sec. 31, Ch. 413, L. 1971; R.C.M. 1947, 3-24-118.**

81-22-408. Manufacturer's and wholesaler's or retailer's names to appear on package — use of codes and numbers permitted. (1) All manufactured dairy products sold, offered, displayed, or exposed for sale at wholesale or retail in this state, wherever manufactured, must be packaged in a protective wrapper or package and must have the manufacturer's and wholesaler's or retailer's names clearly printed in a conspicuous place on the package or wrapper in which it is sold.

(2) If a manufactured dairy product is packaged in a plant other than that of the plant whose name appears on the package or wrapper, the package or wrapper shall also show the name of the plant at which the product was packaged or wrapped.

(3) This section does not prevent the use of codes or numbers which designate the packaging or wrapping plant if these codes or numbers are registered with the department.

History: En. Sec. 32, Ch. 413, L. 1971; amd. Sec. 33, Ch. 310, L. 1974; R.C.M. 1947, 3-24-119; amd. Sec. 14, Ch. 14, L. 1979.

81-22-409. Adulterating milk or cream unlawful. (1) It shall be unlawful for any person to adulterate milk or cream produced or sold for manufacturing purposes or for any manufactured dairy product to contain an adulterant. For purposes of this chapter, the presence of any antimicrobial substance, pesticide residuals, unapproved coloring, food additives, or foreign substances added directly to or assimilated into such products which are not explicitly allowed in the Code of Federal Regulations, except for the addition of adulterants for rejection purposes, shall be deemed adulterated. Violations of this subsection shall be misdemeanors and shall be punishable by fine or imprisonment, or both, as provided in this chapter.

(2) It shall be unlawful for any person to sell, manufacture, exchange, display, or offer or expose for sale or exchange, as milk or cream, any impure, colored, adulterated, or unwholesome milk or cream or any substance in the semblance or imitation of milk or cream, nor shall any such impure, colored, adulterated, or unwholesome milk or cream be used in the manufacture of any article of food for human beings.

History: (1)En. Sec. 37, Ch. 413, L. 1971; Sec. 3-24-124, R.C.M. 1947; (2)En. Sec. 33, Ch. 413, L. 1971; Sec. 3-24-120, R.C.M. 1947; R.C.M. 1947, 3-24-120, 3-24-124.

81-22-410. Manufacture, sale, or importation of products containing extraneous fats. It shall be unlawful for any person to manufacture, mix, compound with, or add to milk, cream, or any manufactured dairy products or to transport into Montana any manufactured dairy product containing foreign animal fats or foreign animal or vegetable oils or products containing nonapproved ingredients with the intent to sell the same as milk, cream, or manufactured dairy products except as allowed under the law and/or regulations of Montana, nor shall any person possess, solicit orders for display, or sell any such article, substance, or compound as or for milk, cream, or manufactured dairy products.

History: En. Sec. 34, Ch. 413, L. 1971; R.C.M. 1947, 3-24-121.

81-22-411. Filled dairy products unlawful — exceptions. (1) Filled dairy products resemble genuine dairy products so closely that they lend themselves readily to substitution for and confusion with such dairy products and in many cases cannot be distinguished from genuine dairy products by the ordinary consumer or ordinary laboratory procedures. The manufacture, sale, exchange, purveying, transportation, possession, or offering for sale or exchange or purveyance of filled dairy products lends itself to substitution, confusion, deception, and fraud and if permitted, tends to interfere with the orderly and fair marketing of foods essential to the well-being of the people of this state. It is hereby declared to be the purpose of this chapter to:

(a) correct, prevent, and eliminate the condition above referred to;

(b) protect the public from confusion, fraud, and deception;

(c) prohibit practices inimical to the general welfare; and

(d) promote the orderly and fair marketing of essential foods.

(2) It is unlawful:

(a) for any person to manufacture, sell, exchange, display, purvey, transport, or possess any filled dairy product or to offer or expose for sale or exchange or to be purveyed any such product in intrastate commerce;

(b) for any person owning or operating a bakery, confectionery shop, factory, or other place where food products are prepared or manufactured for sale, exchange, or purveyance to the public in intrastate commerce to utilize any filled dairy product as an ingredient in any food product so manufactured or prepared;

(c) for any person knowingly to sell, exchange, purvey, transport, or possess any food product in intrastate commerce in which any filled dairy product is an ingredient.

(3) The term "filled dairy product" does not mean or include:

(a) oleomargarine;

(b) any distinctive proprietary food compound not readily mistaken for a dairy product where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;

(c) any frozen dessert containing animal fat (other than butterfat) or vegetable fat when the container is properly labeled;

(d) any dairy product flavored with chocolate or cocoa where the fats or oils other than milk fat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used; or

(e) any dairy product in which the vitamin content has been increased and food oil utilized as a carrier of such vitamins provided the quantity of such food oil does not exceed 1/100 of 1% of the weight of the finished dairy product.

History: En. Sec. 35, Ch. 413, L. 1971; amd. Sec. 6, Ch. 12, L. 1977; R.C.M. 1947, 3-24-122.

81-22-412. Manufactured products to conform to standards of identity. It shall be unlawful for any person to manufacture, display, transport, sell, or offer for sale in Montana as a manufactured dairy product any substance or product which does not conform to the standards of identity for such product as defined in the Code of Federal Regulations or to the standard of identity established by the department.

History: En. Sec. 36, Ch. 413, L. 1971; R.C.M. 1947, 3-24-123.

81-22-413. Pasteurization required. All milk and cream used in the manufacture of any dairy product or products made in semblance or imitation of dairy products sold, offered for sale, purveyed, stored, displayed, or transported in Montana must be pasteurized. However, cheese held, stored, or aged for at least 60 days at not less than 35 degrees F is not required to be made from pasteurized milk or cream but must be labeled "made from raw or unpasteurized milk or unpasteurized cream", as the case may be.

Other cultured raw or unpasteurized dairy products that can be made safe by aging must be similarly aged and labeled as required above.

History: En. Sec. 39, Ch. 413, L. 1971; R.C.M. 1947, 3-24-126; amd. Sec. 15, Ch. 14, L. 1979.

81-22-414. Pasteurization apparatus and records. (1) The department may adopt rules which it considers necessary to assure proper control and use of all equipment used in the process of pasteurization. The department may require the operation of devices and apparatus which are needed to accurately record and indicate temperatures to which and the length of time for which the pasteurized product has been heated, including those periods and temperatures when the equipment is cleaned and sanitized by C.I.P. method. A person using pasteurizing equipment in this state shall properly record and have available to the department for the preceding 2 months all records pertaining to the pasteurization of any product. These records shall at all times be open to the inspection of the department of livestock, the department of health and environmental sciences, and all other state, county, and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

(2) Pasteurizing equipment which records temperatures or controls the time of holding shall be timed, set, and sealed by the department. The seals may not be removed or broken without first notifying the department.

History: En. Sec. 40, Ch. 413, L. 1971; amd. Sec. 34, Ch. 310, L. 1974; amd. Sec. 7, Ch. 12, L. 1977; R.C.M. 1947, 3-24-127.

81-22-415. Pasteurization labeling. It is unlawful for a person to sell, offer for sale, exchange, or to have in his possession for these purposes milk, cream, or a manufactured dairy product in a container or package marked, labeled, or in any way designating the contents of the container or package as "pasteurized", unless it has been treated by an approved process of pasteurization as required by the department.

History: En. Sec. 41, Ch. 413, L. 1971; amd. Sec. 35, Ch. 310, L. 1974; R.C.M. 1947, 3-24-128.

81-22-416. Milk and manufactured dairy products to conform to standards. All milk and cream used in manufactured dairy products, and the manufactured dairy products, shall conform to the standards of purity, quality, and wholesomeness as provided in this chapter or in the regulations promulgated under the authority of this chapter.

History: En. Sec. 44, Ch. 413, L. 1971; R.C.M. 1947, 3-24-131.

81-22-417. Making or selling products in violation of chapter prohibited — penalty. It is unlawful for a person, firm, or corporation or its servant or agent to manufacture, sell, or expose or offer for sale or exchange butter or other substance or commodity defined in this chapter containing less butterfat or other ingredient than required by this chapter. A violator is guilty of a misdemeanor and is punishable under 81-22-601.

History: En. Sec. 4, Ch. 93, L. 1929; amd. Sec. 1, Ch. 39, L. 1931; re-en. Sec. 2620.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1937; amd. Sec. 8, Ch. 310, L. 1974; amd. Sec. 1, Ch. 12, L. 1977; R.C.M. 1947, 3-2404(18).

81-22-418. Posting prices of butterfat required. All persons who buy milk or cream for manufacturing purposes shall post the current prices for butterfat or other component content of milk or cream in a conspicuous place in the factory or place of business. Such price schedule may be based upon butterfat, protein, solids, or other components of milk or cream and shall indicate upon which of such basis payment is made.

History: En. Sec. 45, Ch. 413, L. 1971; R.C.M. 1947, 3-24-132.

81-22-419. Requirements for containers and equipment. All containers and equipment used in the manufacture, storage, holding display, and transportation of any manufactured dairy product shall be nontoxic, easily cleanable, and free from dents, cracks, crevices, rust, and any other condition which would prevent cleaning and sanitizing.

History: En. Sec. 47, Ch. 413, L. 1971; R.C.M. 1947, 3-24-134.

81-22-420. Labeling of animal or vegetable fat contents on frozen desserts. (1) Any frozen dessert made in the semblance of or in imitation of ice cream in this chapter, which contains any amount of animal fat (other than milk fat) or vegetable fat or oil (other than any such fat or oil which is naturally present in any flavoring ingredient), shall be labeled as an animal fat product or vegetable fat product, or a combination of both, as the case may be. Such animal fat or vegetable fat products shall be manufactured from a pasteurized mix which has been processed in a licensed manufacturing dairy product plant. All persons manufacturing, offering for sale or exchange, or selling such animal fat or vegetable fat frozen desserts shall be subject to the sanitary, reporting, and licensing regulations of this chapter and of the regulations promulgated under the authority of this chapter.

(2) No representation shall be made by statement, word, grade designation, design, symbol, device, or in any other manner on any container, package, or wrapper or on any advertising media that such animal fat or vegetable fat product, or combination thereof, is ice cream, sherbet, or any of their low-fat counterparts or derivatives or any other products which are prohibited from containing animal or vegetable fats.

(3) The container, package, or wrapper containing such animal fat or vegetable fat frozen dessert shall be clearly and plainly marked, labeled, or printed on the outside in boldfaced letters with the words, "animal fat product", "vegetable fat product", "animal-vegetable fat product", or "vegetable-animal fat product", as the case may be, and shall bear thereon the common or usual name of each of the ingredients therein, including the fats or oils, except that spices, flavorings, or colorings may be designated as such without naming each.

History: En. Sec. 48, Ch. 413, L. 1971; R.C.M. 1947, 3-24-135.

81-22-421. Labeling on manufactured dairy products to conform to requirements. Labeling on manufactured dairy products shall conform to requirements of the Food, Drug, and Cosmetic Act and to the other requirements which are adopted by the department of livestock or the department of health and environmental sciences.

History: En. Sec. 49, Ch. 413, L. 1971; amd. Sec. 37, Ch. 310, L. 1974; R.C.M. 1947, 3-24-136.

Part 5

Records and Reports

81-22-501. Required records and reports — examination. The department may require dairies and dairy product manufacturers to maintain and produce for examination or to report the records necessary for carrying out its duties under this chapter.

History: En. Sec. 5, Ch. 413, L. 1971; amd. Sec. 13, Ch. 310, L. 1974; R.C.M. 1947, 3-2492.

81-22-502. Monthly report of plant operator — penalty. A person operating a manufactured dairy products plant in this state shall send to the department once a month, not later than the 10th day of the month, a full report of the amounts of butter, cheese, frozen dessert, ice cream, low-fat ice cream, sherbet, water ices, ice milk, freezer-made milk shakes, or other dairy products handled or manufactured during the preceding month, as requested by the department. Any person failing to render the report required by this section or failing to make the report by the date due is guilty of a misdemeanor and subject to the penalties provided in this chapter.

History: En. Sec. 24, Ch. 413, L. 1971; amd. Sec. 28, Ch. 310, L. 1974; R.C.M. 1947, 3-24-111.

81-22-503. Buyers and plants to make records available to department. (1) Persons, including cooperatives, who buy or sell milk or cream on the basis of butterfat, protein, solids, or other component content of milk or cream shall make available to the department, on its request, records showing the amounts of milk or cream sold or purchased, the price per pound, the amount paid, the sampling period for which the amount was paid, and the name and address of the person to whom payment was made or from whom payment was received.

(2) A manufactured dairy product plant, on request by the department, shall make available production records of dairy manufactured products covered by this chapter and manufactured products made in semblance or imitation of these dairy products.

History: En. Sec. 29, Ch. 413, L. 1971; amd. Sec. 32, Ch. 310, L. 1974; R.C.M. 1947, 3-24-116.

Part 6

Penalties

81-22-601. Penalties for violations. (1) A person who violates this chapter, fails to comply with the rules adopted under this chapter, or fails or neglects to obey a lawful order of the department made under this chapter, is guilty of a misdemeanor.

(2) Unless a specific penalty is provided in this chapter or rules for the offense, the offender shall be fined not less than $25 and not more than $500 or imprisoned in the county jail for not to exceed 6 months or both fined and imprisoned.

History: En. Sec. 50, Ch. 413, L. 1971; amd. Sec. 38, Ch. 310, L. 1974; R.C.M. 1947, 3-24-137.

81-22-602. Deceit in grade, measure, or test of milk and cream unlawful. (1) No person may use a measure or grading or testing apparatus which does not comply with the standards of the department or make any false or inaccurate statement or otherwise deceive or defraud a producer or other person concerning the weight, measure, butterfat content, or other component content of milk or cream.

(2) A person, firm, or corporation who violates this section is guilty of a misdemeanor and shall be fined not more than $300 or imprisoned in the county jail for not more than 2 months or both fined and imprisoned. The department may revoke a license issued to a person, firm, or corporation upon conviction for violation of this section.

History: (1)En. Sec. 1, Ch. 182, L. 1931; amd. Sec. 1, Ch. 169, L. 1933; re-en. Sec. 3572.1, R.C.M. 1935; Sec. 3-113, R.C.M. 1947; amd. and redes. 3-24-138 by Sec. 3, Ch. 218, L. 1974; amd. Sec. 8, Ch. 12, L. 1977; Sec. 3-24-138, R.C.M. 1947; (2)En. Sec. 2, Ch. 182, L. 1931; amd. Sec. 2, Ch. 169, L. 1933; re-en. Sec. 3572.2, R.C.M. 1935; Sec. 3-114, R.C.M. 1947; amd. and redes. 3-24-139 by Sec. 4, Ch. 218, L. 1974; Sec. 3-24-139; R.C.M. 1947; R.C.M. 1947, 3-24-138, 3-24-139.

CHAPTER 23

MILK PRICE CONTROL

Part 1 — General Administration

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Part 1

General Administration

81-23-101. Definitions. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-1802.

(b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile, or aseptic.

(c) "Class II milk" includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(d) "Class III milk" includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(e) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(f) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

(g) "Department" means the department of business regulation provided for in Title 2, chapter 15, part 18.

(h) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the premises.

(i) "Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

(j) "Licensee" means a person who holds a license from the department.

(k) "Market" means an area of the state designated by the department as a natural marketing area.

(l) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which is designated as grade A by a duly constituted health authority and also includes those secretions which are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

(m) "Person" means a person, firm, corporation, or cooperative association.

(n) "Producer" means a person who produces milk for consumption in this state, selling it to a distributor.

(o) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

(p) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(q) "Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail or for consumption on the premises.

(r) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectionaries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(s) "Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.

(2) The department may assign new milk products, not expressly included in one of the classes defined in this section, to the class which in its discretion it determines to be proper.

History: En. Sec. 3, Ch. 204, L. 1939; amd. Sec. 1, Ch. 192, L. 1959; amd. Sec. 3, Ch. 4, L. 1967; amd. Sec. 1, Ch. 107, L. 1971; amd. Sec. 89, Ch. 431, L. 1975; R.C.M. 1947, 27-403.

81-23-102. Policy. (1) It is hereby declared that:

(a) milk is a necessary article of food for human consumption;

(b) the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;

(c) the production, transportation, processing, storage, distribution, and sale of milk in the state of Montana is an industry affecting the public health and interest;

(d) unfair, unjust, destructive, and demoralizing trade practices have been and are now being carried on in the production, transportation, processing, storage, distribution, and sale of milk and products manufactured therefrom, which trade practices constitute a constant menace to the health and welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of content and purity of milk;

(e) health regulations alone are insufficient to prevent disturbances in the milk industry and to safeguard the consuming public from further inadequacy of a supply of this necessary commodity;

(f) it is the policy of this state to promote, foster, and encourage the intelligent production and orderly marketing of milk and cream and products manufactured therefrom, to eliminate speculation and waste, to make the distribution thereof between the producer and consumer as direct as can be efficiently and economically done, and to stabilize the marketing of such commodities;

(g) investigations have revealed and experience has shown that, due to the nature of milk and the conditions surrounding the production and marketing of milk and due to the vital importance of milk to the health and well-being of the citizens of this state, it is necessary to invoke the police powers of the state to provide a constant supervision and regulation of the milk industry of the state to prevent the occurrence and recurrence of those unfair, unjust, destructive, demoralizing, and chaotic conditions and trade practices within the industry which have in the past affected the industry and which constantly threaten to be revived within the industry and to disrupt or destroy an adequate supply of pure and wholesome milk to the consuming public and to the citizens of this state;

(h) milk is a perishable commodity which is easily contaminated with harmful bacteria, which cannot be stored for any great length of time, which must be produced and distributed fresh daily, and the supply of which cannot be regulated from day to day but, due to natural and seasonal conditions, must be produced on a constantly uniform and even basis;

(i) the demand for this perishable commodity fluctuates from day to day and from time to time making it necessary that the producers and distributors shall produce and carry on hand a surplus of milk in order to guarantee and insure to the consuming public an adequate supply at all times, which surplus must of necessity be converted into byproducts of milk at great expense and ofttimes at a loss to the producer and distributor;

(j) this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine and destroy the milk industry, which causes producers to relax their diligence in complying with the provisions of the health authorities and ofttimes to produce milk of an inferior and unsanitary quality;

(k) investigation and experience have further shown that, due to the nature of milk and the conditions surrounding its production and marketing, unless the producers, distributors, and others engaged in the marketing of milk are guaranteed and insured a reasonable profit on milk, both the supply and quality of milk are affected to the detriment of and against the best interest of the citizens of this state whose health and well-being are thereby vitally affected;

(l) where no supervision and regulation are provided for the orderly and profitable marketing of milk, past experience has shown that the credit status of both producers and distributors of milk is adversely affected to a serious degree, thereby entailing loss and hardship upon all within the community with whom these producers and distributors carry on business relations;

(m) due to the nature of milk and the conditions surrounding its production and distribution, the natural law of supply and demand has been found inadequate to protect the industry in this and other states and in the public interest it is necessary to provide state supervision and regulation of the milk industry in this state.

(2) The general purpose of this chapter is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police powers of the state.

History: (1)En. Sec. 1, Ch. 204, L. 1939; amd. Sec. 1, Ch. 4, L. 1967; Sec. 27-401, R.C.M. 1947; (2)En. Sec. 2, Ch. 204, L. 1939; amd. Sec. 2, Ch. 4, L. 1967; amd. Sec. 88, Ch. 431, L. 1975; Sec. 27-402, R.C.M. 1947; R.C.M. 1947, 27-401, 27-402.

81-23-103. General powers of the department. (1) The department shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. Nothing in this chapter abrogates or affects the status, force, or operation of any provision of public health laws or the law under which the department of livestock is constituted together with the department of livestock rules, county board of health rules, or municipal ordinances for the promotion or protection of the public health. The department may cooperate with the department of health and environmental sciences, the board of livestock, any county or city board of health, or the department of agriculture in enforcing this chapter.

(2) The department shall investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and conduct hearings upon any subject pertinent to the administration of this

chapter. The department may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter and may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness.

History: **En. Sec. 5, Ch. 204, L. 1939; amd. Sec. 3, Ch. 192, L. 1959; amd. Sec. 4, Ch. 4, L. 1967; amd. Sec. 1, Ch. 267, L. 1975; amd. Sec. 90, Ch. 431, L. 1975; amd. Sec. 1, Ch. 19, L. 1977; R.C.M. 1947, 27-405.**

81-23-104. Rules and orders. The department may adopt and enforce rules and orders necessary to carry out the provisions of this chapter and any orders adopted under it by the department or the board. A rule or order shall be posted for public inspection in the main office of the department for 30 days, and a copy shall be filed in the office of the department. A copy shall also be sent by registered or certified letter to the secretary of each area, except in the case of an order directed only to a person or persons named in it, which shall be served by personal delivery of a copy or by mailing a copy to each person to whom the order is directed or, in the case of a corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with laws of this state. The posting, in the main office of the department, of a rule or order not required to be personally served as provided in this section and the filing in the office of the department is sufficient notice to all persons affected by the rule or order. A rule or order when properly posted and filed or served, as provided in this section, has the force of law.

History: **En. Sec. 13, Ch. 204, L. 1939; amd. Sec. 97, Ch. 431, L. 1975; R.C.M. 1947, 27-413.**

81-23-105. Testing of milk. (1) For the purpose of determining the value of milk supplied by producers during routine audits of milk processing plants which receive raw milk directly from producers, the department of business regulation shall establish a program of testing such raw milk.

(2) The department of business regulation may levy an assessment on licensed producers to secure the necessary funds to administer this program. This assessment is in addition to those provided in 81-23-202.

(3) All personnel employed in the sampling and testing program shall be licensed by the animal health division of the department of livestock.

(4) The department of business regulation may conduct all types of sampling, grading, and testing techniques which it considers necessary to carry out the intent of this section.

History: **En. 27-430 by Sec. 1, Ch. 245, L. 1977; R.C.M. 1947, 27-430.**

81-23-106. Application. This chapter does not apply to foreign or interstate commerce except insofar as it may be effective in compliance with the United States constitution and with the laws of the United States. It is the intention of the legislature, however, that the instant, whenever that may be, that the handling within the state by a dealer of milk produced outside of the state becomes the subject of regulation by the state in the exercise of its police powers, the provisions of this chapter affecting intrastate milk immediately apply and the powers conferred by this chapter attach thereto.

History: **En. Sec. 23, Ch. 204, L. 1939; amd. Sec. 106, Ch. 431, L. 1975; R.C.M. 1947, 27-423(2).**

Part 2

Licensing

81-23-201. Licenses to producers, producer-distributors, distributors, and jobbers. In any market where the provisions of this chapter apply, it is unlawful for a producer, producer-distributor, distributor, or jobber to produce, transport, process, store, handle, distribute, buy, or sell milk unless the dealer is properly licensed as provided by this chapter. It is unlawful for a person to buy, sell, handle, process, or distribute milk which he knows or has reason to believe has been previously dealt with or handled in violation of any provision of this chapter. The department may decline to grant a license or may suspend or revoke a license already granted, upon due cause and after hearings.

History: En. Sec. 8, Ch. 204, L. 1939; amd. Sec. 4, Ch. 107, L. 1971; amd. Sec. 93, Ch. 431, L. 1975; R.C.M. 1947, 27-408.

81-23-202. Licenses — disposition of income. (1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department of livestock or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter by the department. The annual fee for the license from the department is $2 and is due before July 1 and shall be deposited by the department to the credit of the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter shall apply to every part of the state of Montana.

(2) In addition to the annual license fee, the department shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by a producer-distributor;

(b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;

(c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor, excepting that which is sold to another distributor.

(3) The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4) The assessment upon producer-distributors, producers, and distributors shall be paid quarterly before January 15, April 15, July 15, and October 15 of each year. The amount of the assessment shall be computed by applying the fee designated by the department to the volume of milk sold in the preceding calendar quarter.

(5) Failure of a producer, producer-distributor, or distributor to pay an assessment when due is a violation of this chapter and his license under this

chapter automatically terminates and is void. A license so terminated shall be reinstated by the department upon payment of a delinquency fee equal to 30% of the assessment which was due.

(6) All assessments required by this chapter shall be deposited by the department in the earmarked revenue fund. All costs of administering this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this chapter, shall be paid out of control board moneys in that fund.

(7) The department may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year.

History: Ap. p. Sec. 9, Ch. 204, L. 1939; amd. Sec. 6, Ch. 192, L. 1959; amd. Sec. 157, Ch. 147, L. 1963; amd. Sec. 5, Ch. 107, L. 1971; amd. Sec. 2, Ch. 127, L. 1974; amd. Sec. 94, Ch. 431, L. 1975; Sec. 27-409, R.C.M. 1947; Ap. p. Sec. 23, Ch. 204, L. 1939; amd. Sec. 106, Ch. 431, L. 1975; Sec. 27-423, R.C.M. 1947; R.C.M. 1947, 27-409, 27-423(part).

81-23-203. Application for licenses. An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared under authority of the department, and an applicant shall state facts concerning his circumstances and the nature of the business to be conducted which in the opinion of the department are necessary for the administration of this chapter. The application shall certify the applicant to be the holder of all licenses required by the department of livestock for the conduct of his business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug, and Cosmetic Act. The application shall be accompanied by the license fee required to be paid.

History: En. Sec. 10, Ch. 204, L. 1939; amd. Sec. 7, Ch. 192, L. 1959; amd. Sec. 6, Ch. 107, L. 1971; amd. Sec. 95, Ch. 431, L. 1975; R.C.M. 1947, 27-410.

81-23-204. Declining, suspending, and revoking licenses — penalties in lieu of suspension or revocation. (1) The department may refuse to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this chapter or of any lawful order or rule of the board or department, the failure or refusal to make required statements or reports, or failure to pay license or assessment fees are causes for which the department may, at its discretion, suspend or revoke a license.

(2) In place of suspension or revocation of a license, the department may assess a civil penalty not to exceed $500 per day for each daily failure to comply with or each daily violation of the provisions of this chapter or of any lawful order or rule of the department or board. If the person against whom a civil penalty is assessed fails to pay the civil penalty immediately, the department shall collect the civil penalty by a civil proceeding in the district court of the first judicial district. This penalty shall be construed as civil and not criminal in nature. Any moneys received by the department as a result of collection of civil penalties shall be paid into the earmarked revenue fund as provided by 81-23-403.

History: En. Sec. 11, Ch. 204, L. 1939; amd. Sec. 7, Ch. 107, L. 1971; amd. Sec. 96, Ch. 431, L. 1975; R.C.M. 1947, 27-411.

81-23-205. Bonds required of distributors — amounts — forms and conditions. (1) A distributor before purchasing milk from a producer shall deliver to the department a surety bond of not less than $1,000, executed by the distributor as principal and by a surety company authorized to do business in this state as surety. The bond shall be on a form approved by the department and shall be conditioned upon the payment, in the manner required by this chapter, of all amounts due to producers for milk purchased by the distributor during the license year. The bond shall be to the state in favor of every producer of milk. In case of failure by a distributor to pay a producer for milk in the manner required by this chapter, the department shall proceed immediately to ascertain the names and addresses of all producer-creditors of that distributor, together with the amounts due them and shall request all those producer-creditors to file a verified statement of their respective claims. The department shall then sue on the bond on behalf of the producer-creditors. Upon suing on the bond, the department may require the filing of a new bond; and immediately upon a recovery in an action upon the bond, the distributor shall file a new bond. Upon failure to file a new bond within 10 days in either case, the failure is grounds for the revocation or suspension of the license of the distributor. If recovery on the bond is not sufficient to pay all of the claims as finally determined by the court, the amount recovered shall be divided pro rata among the producer-creditors.

(2) The minimum bond of $1,000 shall be required of distributors purchasing an average daily quantity of milk of less than 100 gallons; distributors purchasing an average daily quantity of 100 gallons and less than 200 gallons during any calendar month during a license year shall post a bond in the amount of $2,000; distributors purchasing an average daily quantity of 200 gallons and less than 300 gallons during any calendar month during a license year shall post a bond in the amount of $3,000; distributors purchasing an average daily quantity of 300 gallons or more during any calendar month during a license year shall post a bond in the sum of $5,000.

(3) If a distributor increases his purchases of milk during the license year to exceed the amount for which he is bonded, he shall immediately post the additional bond required to comply with this section.

(4) The department may require a distributor to furnish a bond in addition to those specified in this section if, after notice and hearing and upon good cause shown, it determines the additional bond is required to assure payment of all amounts due or to become due to producers.

(5) Failure of a distributor who purchases milk from producers to post a bond required by this section is a violation of this chapter.

History: En. Sec. 10, Ch. 192, L. 1959; amd. Sec. 7, Ch. 4, L. 1967; amd. Sec. 108, Ch. 431, L. 1975; R.C.M. 1947, 27-426.

Part 3

Regulation of Milk Prices

81-23-301. Markets. (1) Pursuant to the declaration of policy relating to milk set forth in 81-23-102(1), the department shall designate natural marketing areas which shall together embrace all the geographical area of the state and shall enforce minimum producer, wholesale, and retail prices established for those areas by the board.

(2) Natural marketing areas shall be established throughout the state by the department. Before a proposed natural marketing area is established, the department, after notice of at least 30 days, shall hold a hearing or hearings, at a place or places within the proposed area, at which producers and distributors doing business within the proposed natural marketing area, who are licensed by the department of livestock, and the consuming public may present evidence and testify. If the hearing or hearings make it evident to the department that the establishment of the proposed natural marketing area is in the public interest, the department shall establish the natural marketing area.

(3) The department may from time to time adjust the boundaries of natural marketing areas, if after a hearing upon notice of at least 30 days to all interested parties it finds the adjustment to be in the public interest.

History: En. Sec. 6, Ch. 204, L. 1939; amd. Sec. 4, Ch. 192, L. 1959; amd. Sec. 2, Ch. 107, L. 1971; amd. Sec. 91, Ch. 431, L. 1975; R.C.M. 1947, 27-406.

81-23-302. Establishment of minimum prices. (1) The board shall fix minimum producer, wholesale, jobber, and retail prices for class I milk and minimum producer prices only for class II and class III milk in all areas of the state by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish such prices by means of flexible formulas which shall be devised so that they bring about such automatic changes in all minimum prices as are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices which are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors which shall be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

(5) Such specific factors may include but shall not be limited to the following items:

(a) current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes;

(b) the ability and willingness of consumers to purchase, which shall include among other things per capita disposable income statistics, consumer price indexes, and wholesale price indexes;

(c) the cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States department of agriculture), prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

(d) the alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(e) the prices of butter, nonfat dry milk, and cheese;

(f) the cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(g) the cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost, and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing wage rates in the state;

(h) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk;

(i) a reasonable return on necessary investment to all ordinarily efficient and economical milk dealers.

(6) If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence which may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula whereby minimum:

(a) producer prices for milk in classes I, II, and III shall be computed;

(b) wholesale prices for milk in class I shall be computed;

(c) jobber prices for milk in class I shall be computed;

(d) retail prices for milk in class I shall be computed.

(8) This section shall not be construed as requiring the board to promulgate any specific number of formulas, but shall be construed liberally so that the board may adopt any reasonable method of expression to accomplish the objective set forth in subsection (7). If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons therefor and establish such separate formulas.

(9) Each rule establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades, or uses as the board may deem advisable and shall specify the minimum prices therefor.

(10) The milk produced in one natural marketing area and sold in another natural marketing area shall be paid for by a distributor or dealer in accordance with the pricing order of the area where produced at the price therein specified of the class or use in which it is ultimately used or sold.

(11) The board shall adopt rules after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act to regulate transportation rates which distributors, contract haulers, and others charge producers for both farm-to-plant and interplant transportation of milk. No allowance for transportation of milk between plants may be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest.

(12) All milk purchased within a natural marketing area by a distributor shall be purchased on a uniform basis. The basis to be used shall be established by the board after the producers and the distributors of the area have been consulted.

(13) The board may amend any official rule in the same manner provided herein for the original establishment of milk pricing formulas. The board may in its discretion, when it determines the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas in all market areas of the state.

(14) Upon petition of a distributor or a majority of his producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence adduced at such hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

(15) Upon petition by any producer, producer-distributor, or distributor in any marketing area, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for an areawide or statewide pooling arrangement as a method of payment of producer prices, provided that at such hearing the board shall among other things specifically receive and consider evidence concerning production and marketing practices which have historically prevailed in the area concerned or statewide, as the case may be. If the board finds that the evidence adduced at such hearing warrants the establishment of such an areawide or statewide pooling arrangement, the board shall proceed by official order to establish the same; but such official order shall be of no force or effect until it is approved in a referendum conducted by the board among affected producers, producer-distributors, and distributors.

(16) The requirements hereinabove set forth concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or areawide or statewide pooling arrangements or abandonment thereof.

(17) Rules adopted pursuant to this section shall be enforced and audited for compliance by the milk control division of the department of business regulation.

History: En. Sec. 7, Ch. 204, L. 1939; amd. Sec. 5, Ch. 192, L. 1959; amd. Sec. 5, Ch. 4, L. 1967; amd. Sec. 3, Ch. 107, L. 1971; amd. Sec. 1, Ch. 127, L. 1974; amd. Sec. 92, Ch. 431, L. 1975; amd. Sec. 2, Ch. 19, L. 1977; R.C.M. 1947, 27-407.

81-23-303. Rules of fair trade practices. The department may adopt reasonable rules governing fair trade practices as they pertain to the transaction of business among licensees under this chapter and among licensees and the general public. Those rules shall contain but are not limited to provisions prohibiting the following methods of doing business which are unfair, unlawful, and not in the public interest:

(1) the payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by a person, whether in the form of money or otherwise;

(2) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer;

(3) the extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions;

(4) the purchasing, processing, bottling, packaging, transporting, delivering, or otherwise handling in any marketing area of milk which is to be or is sold or otherwise disposed of at less than the minimum wholesale and minimum retail prices established by the board;

(5) the payment of a price lower than the applicable producer price, established by the board, by a distributor to a producer for milk which is distributed to any person, including agencies of the federal, state, or local government.

History: **En. Sec. 14, Ch. 204, L. 1939; amd. Sec. 8, Ch. 192, L. 1959; amd. Sec. 98, Ch. 431, L. 1975; R.C.M. 1947, 27-414.**

81-23-304. Limitation on extension of credit to retailers. A sale or delivery may not be made by a producer-distributor, distributor, or jobber to a retailer, except for cash or payment within 15 days after regular billings, and all producer-distributors, distributors, and jobbers shall bill retailers at least monthly. A producer-distributor, distributor, or jobber may not extend more than 15 days' credit after billing to a retailer. A retailer may not receive delivery of milk without agreement to pay for it in cash within 15 days after regular billing. A correctly dated check which is honored upon presentment is cash within the meaning of this section. An extension or acceptance of credit in violation of this section shall be construed as rendering or receiving financial assistance. The licenses of producer-distributors, distributors, or jobbers involved in violation of this section shall be suspended or revoked as determined by the department in its discretion.

History: **En. Sec. 8, Ch. 107, L. 1971; amd. Sec. 99, Ch. 431, L. 1975; R.C.M. 1947, 27-414.1.**

81-23-305. Financing prohibitions — producer and retailer. (1) A producer, producer-distributor, distributor, or jobber licensed under this chapter may not advance or loan money or credit to or furnish money or credit for or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts, or other commercial paper for or on behalf of a retailer. A producer, producer-distributor, distributor, or jobber may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A producer-distributor, distributor, or jobber licensed under this chapter may not advance or loan money or credit to or furnish money or credit for or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts, or other commercial paper for or on behalf of a producer. A producer-distributor, distributor, or jobber may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a producer. This section does not prohibit a producer from belonging to, participating in, or patronizing a cooperative corporation or a producer, producer-distributor, distributor, or jobber from operating his own wholly-owned dairy products or other retail store or home-delivery retail routes.

(2) This section does not prohibit a producer from requesting and a distributor from granting an advance payment for milk before the regular date of payment for milk or limit in any way the right of a producer to assign part or all of moneys which are or may become due to him from a distributor.

History: En. Sec. 9, Ch. 107, L. 1971; amd. Sec. 100, Ch. 431, L. 1975; R.C.M. 1947, 27-414.2.

Part 4

Enforcement

81-23-401. Entry, inspection, and investigation. The department may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled, or stored or where the books, papers, records, or documents relative to those transactions are kept, and may inspect and copy them in any place in this state. The department may administer oaths and take testimony for the purpose of ascertaining facts which, in the judgment of the department, are necessary to administer this chapter.

History: En. Sec. 15, Ch. 204, L. 1939; amd. Sec. 6, Ch. 4, L. 1967; amd. Sec. 101, Ch. 431, L. 1975; R.C.M. 1947, 27-415.

81-23-402. Reports of dealers — accounting system — records. (1) The department may require licensees to file with it reports at reasonable or regular times which the department may require, showing the licensee's production, sale, or distribution of milk and any information considered by the department necessary which pertains to the production, sale, or distribution of milk, either under oath or otherwise, as the department may direct. Failure or refusal to file a report when directed to do so is grounds for the revocation of the license and is a violation for which the licensee may be fined as provided by this chapter, one or both, at the discretion of the department.

(2) The department shall adopt a uniform system of accounting to be used by the distributor to account for the usage of all milk received by the distributor.

(3) A distributor and producer-distributor shall keep:

(a) a record of all milk, cream, or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, deductions or charges made, and the use to which the milk or cream was put;

(b) a record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold;

(c) a complete record of all milk, cream, or dairy products sold, classified as to kind and grade, showing where sold, and the amount received in payment;

(d) a record of the wastage or loss of milk or dairy products;

(e) a record of the items of handling expense;

(f) a record of all refrigeration facilities sold for storage purposes to any person, showing types, sizes, and location of the facilities and the original or duplicate original of all agreements covering sales for them;

(g) other records which the department considers necessary for the proper enforcement of this chapter.

History: **En. Sec. 16, Ch. 204, L. 1939; amd. Sec. 9, Ch. 192, L. 1959; amd. Sec. 102, Ch. 431, L. 1975; R.C.M. 1947, 27-416.**

81-23-403. Disposition of fines. (1) All fines assessed by a court for violation of this chapter shall be paid by the court to the department.

(2) All fines received by the department shall be deposited with the state treasurer and shall be placed by him in the earmarked revenue fund. Fines assessed for violations of this chapter are earmarked for the purposes of this chapter.

History: **En. Sec. 17, Ch. 204, L. 1939; amd. Sec. 158, Ch. 147, L. 1963; amd. Sec. 103, Ch. 431, L. 1975; R.C.M. 1947, 27-417.**

81-23-404. Cooperation with other governmental agencies. In order to secure a uniform system of milk control, the department shall confer and cooperate with the proper authorities of other states and of the United States, including the secretary of agriculture of the United States, and for those purposes, the department may conduct joint hearings, issue joint or concurrent orders, and exercise all its powers under this chapter.

History: **En. Sec. 21, Ch. 204, L. 1939; amd. Sec. 104, Ch. 431, L. 1975; R.C.M. 1947, 27-421.**

81-23-405. Violations made misdemeanors — penalties. (1) A person who produces, sells, distributes, or handles milk in any way, except as a consumer, without a license from the department as required by this chapter or who violates a lawful rule of the department or board is guilty of a misdemeanor punishable by a fine not exceeding $600. Each day's violation is a separate offense.

(2) The district courts have original jurisdiction in all criminal actions for violations of this chapter and in all civil actions for the recovery or enforcement of penalties provided for in this chapter. All of those actions, both criminal and civil, shall be tried in the district court.

(3) The county attorneys, in their respective counties, shall diligently prosecute all violations of this chapter.

History: **En. Sec. 22, Ch. 204, L. 1939; amd. Sec. 105, Ch. 431, L. 1975; R.C.M. 1947, 27-422.**

81-23-406. Additional remedies. The department may begin any proceeding at law or in equity as may appear necessary to enforce compliance with this chapter or to enforce compliance with an order or rule of the board or department adopted under this chapter or to obtain a judicial interpretation of any of them. In addition to any other remedy, the department may apply to the district court of the district where the action arises for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist. The department may not be required to post bond in an action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board or department in the name of the department of business regulation, and it is not necessary in an action to which the department is a party that the action be brought by or against this state on relation of the department. The department may sue by its own attorney, and it may also call upon a county attorney to represent it in the district court of his county or the attorney general to represent it on appeal to the supreme court, or it may associate its own attorney with either in any court.

History: **En. Sec. 24, Ch. 204, L. 1939; amd. Sec. 107, Ch. 431, L. 1975; R.C.M. 1947, 27-424.**

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actions may be brought by or against the board or department in the name of the department of business regulation, and it is not necessary in an action to which the department is a party that the action be brought by or against the state on relation of the department. The department may sue by its own attorney, and it may also call upon a county attorney to represent it in the district court of his county or the attorney general to represent it on appeal to the supreme court, or it may associate its own attorney with either in any court.

History: En. Sec. 24, Ch. 289, L. 1959; amd. Sec. 167, Ch. 431, L. 1975; R.C.M. 1947, 33-424.

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